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# VOTING IN MISSISSIPPI



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THE UNITED STATES COMMISSION ON CIVIL RIGHTS

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A Report of the United States Commission on Civil Rights  
1965

*Members of the Commission*

JOHN A. HANNAH, *Chairman*  
EUGENE PATTERSON, *Vice Chairman*  
MRS. FRANKIE MUSE FREEMAN  
ERWIN N. GRISWOLD  
Rev. THEODORE M. HESBURGH, C.S.C.  
ROBERT S. RANKIN

WILLIAM L. TAYLOR, *Staff Director-designate.*

## LETTER OF TRANSMITTAL

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THE UNITED STATES COMMISSION ON CIVIL RIGHTS  
*Washington, D.C., May 18, 1965.*

The PRESIDENT.

The PRESIDENT OF THE SENATE.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIRS: The Commission on Civil Rights presents to you this report pursuant to Public Law 85-315 as amended.

The report presents and analyzes information concerning denials of the right to vote in Mississippi collected by the Commission as a result of extensive investigations in 1964 and a public hearing held in Jackson in February 1965. The Commission has found that Negro citizens of Mississippi have been and are being denied the right to vote in violation of our Constitution.

Although the problem presented is both serious and longstanding, legislation currently pending in the Congress offers the prospect of substantial improvement.

We urge your consideration of the facts presented and of the recommendations for corrective action.

Respectfully yours,

JOHN A. HANNAH, *Chairman.*

EUGENE PATTERSON, *Vice Chairman.*

Mrs. FRANKIE M. FREEMAN.

ERWIN N. GRISWOLD.

REV. THEODORE M. HESBURGH, C.S.C.

ROBERT S. RANKIN.

## ACKNOWLEDGMENTS

The Commission wishes to acknowledge the services of its Mississippi Advisory Committee under the leadership of Dr. A. B. Britton, Jr. Despite many difficulties, the Committee, since October 1961, has gathered facts through a series of public meetings on civil rights problems in various parts of the State. In doing so, members of the Committee have braved criticism and pressure in their own communities and have gone to communities where the holding of a meeting was a novel and difficult enterprise. The Commission believes that the Advisory Committee has made a lasting contribution to the progress of civil rights in Mississippi.

The Commission acknowledges the generous assistance of many Federal officials. Particular mention should be made of attorneys in the Civil Rights Division of the Department of Justice who assisted the Staff in its investigation, officials of the Veterans Administration who permitted the Commission to use the Jackson Veterans Administration Center, U.S. marshals and their staffs in Mississippi who performed a variety of services, and the late Sidney C. Mize, Federal District Judge for the Southern District of Mississippi, who made available his courtroom for the Commission's executive session.

The Commission also wishes to thank the many private citizens in Mississippi who gave generously of their time and without whose knowledge and assistance the hearing would not have been possible.

Lastly, the Commission is indebted to the staff of the General Counsel's office which carried these projects to a successful completion under the able and vigorous leadership of William L. Taylor. Mr. Taylor, formerly General Counsel, has recently been designated by President Johnson to be Staff Director of the Commission.

## PREFACE

The United States Commission on Civil Rights is an independent, bipartisan agency established by Congress in 1957. The Commission, among other duties, has been directed to investigate complaints that certain citizens are being deprived of their right to vote by reason of their color, race, religion, or national origin, and to study legal developments constituting a denial of equal protection of the laws under the Constitution. The Commission reports its findings, conclusions, and recommendations to the President and Congress.

The Commission has long believed it has a special responsibility in the field of voting. Voting was the subject of Commission public hearings in Montgomery, Alabama, in 1958 and 1959, and in New Orleans, Louisiana, in 1960 and 1961. In statutory reports to the President and Congress in 1959, 1961, and 1963 the Commission dealt with the right to vote and made recommendations for Congressional action.

In 1960 and 1961 the Commission's staff conducted field investigations in Mississippi. The 1961 Commission report brought to the attention of the President and Congress serious questions concerning the ability of Mississippi's Negro citizens to register and vote. A hearing scheduled for 1962 in Mississippi was postponed at the request of the U.S. Attorney General. In 1963, after staff investigation, the Commission found that there had been "open and flagrant violation of constitutional rights in Mississippi."

During 1964 Commission staff conducted further investigations in Mississippi. A detailed statewide study of voting practices was not attempted. Instead, the staff made a preliminary selection of counties with a high Negro population where Negroes had attempted to register or vote but where few, if any, had succeeded. The choice of counties was restricted further by a decision not to investigate in any area where the Department of Justice was at that time conducting a lawsuit which might have produced a conflicting or overlapping investigation. A county with a *relatively* high rate of Negro registration was selected for purposes of contrast.

Commission attorneys then made field trips to the selected counties. They interviewed Negroes who had attempted to register, civil rights workers, local Negroes participating in voter registration work, and, where official misconduct was charged, registration and law enforcement officials. In each case the staff attempted to determine the extent to which Negroes had attempted to register, the reasons for their success or failure, and the principal deterrents to greater Negro political participation. Witnesses

from a number of counties investigated in this way were not subpoenaed for the hearing because field investigations showed that their testimony would have been merely cumulative. The counties selected for presentation were thus fairly representative of a larger number investigated by the Commission.

The counties finally selected were for the most part in or adjacent to the Mississippi Delta, a broad alluvial plain in the western part of the State, with a large Negro population engaged primarily in farm work. In conducting its investigations Commission staff made repeated visits to virtually all parts of this area.

The Commission's hearings were held in Jackson in February 1965. In accordance with the statute regulating such hearings, the Commission first met in Executive Session on February 10-11 at the Federal Court House in Jackson. At this time it afforded an opportunity for any person who it determined might be defamed, degraded, or incriminated in public testimony to be heard privately. Notices were sent to 32 persons, 10 of whom appeared.

The public sessions of the hearing were held in the Auditorium of the Veterans Administration Center in Jackson, beginning on February 16 and continuing through February 20, 1965. During the first 2 days, which were devoted primarily to voting problems, the Commission heard more than 30 witnesses. These proceedings were open to the public, were well attended, and widely publicized.

The Commission's investigation and hearing focused on discrimination in voting and law enforcement. This report will present the findings of the Commission with respect to voting. Although the effects of violence and official misconduct on voting are considered in this report, the broader subject of law enforcement as it relates to civil rights activities will be considered in a separate Commission study.

Since the Commission's hearing there have been encouraging developments in the field of voting. Legislation has been introduced and is now pending in Congress which, if enacted, will go far to eliminate some of the problems found by the Commission. In addition, we have been heartened by what appears to be a growing willingness of some community leaders in Mississippi to speak out against discrimination in voting. With these encouraging signs, the Commission looks forward to an ending of the practices recorded in this report.

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## CHAPTER I. HISTORY OF MISSISSIPPI VOTING LEGISLATION

At the time of the Presidential election of 1964 it was estimated that more than 70 percent of the white voting age population of Mississippi, but less than 7 percent of its Negro voting age population, were registered to vote.<sup>1</sup> Mississippi had by far the lowest rate of Negro registration and the greatest disparity between the rates of white and Negro registration of any Southern State. The causes of this disparity are rooted in history. An examination of the development of voting laws in Mississippi indicates that disfranchisement of the Negro is the result of a deliberate State policy pursued over many years.

Prior to the Civil War Negroes were denied the franchise in Mississippi by express provision of law. Ironically, the first voting legislation to exclude Negroes—only a "free white male" was allowed to vote—was enacted in 1808 by the United States Congress as an amendment to the Organic Act controlling the Mississippi Territory.<sup>2</sup> This provision was carried forward in the first constitution of Mississippi, adopted in 1817 when the State was admitted to the Union,<sup>3</sup> and in the constitution of 1832, which remained in effect until the end of the Civil War.<sup>4</sup>

### RECONSTRUCTION

Negroes first began to register and vote in Mississippi under the military government established at the conclusion of the War. Following the passage of the Reconstruction Act of 1867, an election was held to select delegates to a constitutional convention.<sup>5</sup> Negroes were permitted to register and vote freely in this election and they participated in large numbers.<sup>6</sup> The Black and Tan Convention (as it was known), which assembled in 1868, numbered 16 Negroes among its 100 members.<sup>7</sup> It drew up a constitution eliminating most qualifications for voting and extending the franchise to Negroes on the same basis as whites.<sup>8</sup> This constitution was ratified in 1869. For the first time Negroes were permitted by State law to vote, and, in fact, comprised a majority of the electorate.<sup>9</sup>

<sup>1</sup> *Hearings in Jackson, Miss., before The U.S. Commission on Civil Rights*, Feb. 16-20, 1965, Vol. I, at 177 (1965) (the transcript is hereinafter cited as "T.").

<sup>2</sup> Act of Jan. 9, 1808, ch. 9, 2 Stat. 455.

<sup>3</sup> Miss. Const. art. 3, § 1 (1817).

<sup>4</sup> Miss. Const. art. 3, § 1 (1832).

<sup>5</sup> Southern Historical Publication Soc'y, *The South in the Building of the Nation*, 431 (1909).

<sup>6</sup> Jackson Weekly Clarion, Sept. 19, 1867, p. 2, col. 1.

<sup>7</sup> Power, *The Black and Tan Convention*, 3 Publications of the Miss. Historical Soc'y. 78 (1900).

<sup>8</sup> Miss. Const. art. 4 (1869).

<sup>9</sup> Jackson Weekly Clarion, Sept. 19, 1867, p. 2, col. 1.

The peak of Negro political participation was reached between 1870 and 1873. In 1870 there were five Negro State senators, and the representatives from Adams, Washington, Warren, and the other river counties were all Negroes.<sup>10</sup> The legislature met in January and promptly ratified both the 14th and 15th amendments to the United States Constitution, thus clearing the way for readmission to the Union.<sup>11</sup> It also chose United States Senators, one of whom, Hiram R. Revels, became the first Negro to sit in the Senate.<sup>12</sup> In February 1870 Mississippi was readmitted by Act of Congress upon the condition that the constitution of the State "shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote who are entitled to vote by the constitution herein recognized . . ." <sup>13</sup>

In 1871 the first elections of local officials were held under the new constitution. Some Negroes were chosen as county officers in these elections, and their number was increased after the local elections of 1873.<sup>14</sup>

### 1875-1890

During this period, white opposition to Negro political activity began to organize. Its principal weapons were economic intimidation and violence. In the election of 1875 local Democratic political clubs announced that no Negro who voted for a Republican could hope for any form of employment the following year.<sup>15</sup> Checkers were stationed at the polls, and groups of armed men intercepted Negroes on their way to register.<sup>16</sup> Negro political leaders were threatened that continued activity would result in death.<sup>17</sup> As a result of these tactics, Negro voting diminished throughout the State and the Democrats returned to power.<sup>18</sup>

The election of 1875 resulted in the defeat of the Radical government in Mississippi. In the words of a Congressional investigating committee in 1876, the new political leaders "secured power by fraud and force, and, if left to themselves, they will by fraud and force retain it." <sup>19</sup>

The period between 1876 and 1890 was marked by enactment of the first of modern laws to discourage Negro voting. The Election Law of 1876 placed registration of voters in the hands of local registration officers appointed by the Governor. A prospective voter was required to give detailed information about his residence, including the election district, township,

<sup>10</sup> McNeily, *War and Reconstruction in Mississippi 1863-1890*, 2 Publications of the Miss. Historical Soc'y 388 (Centenary Ser. 1918).

<sup>11</sup> Legislative Reference Service, Library of Congress, *The Constitution of the United States: Analysis and Interpretation*, S. Doc. No. 39, 88th Cong., 1st Sess. 64, 66 (1964).

<sup>12</sup> *Biographical Directory of the American Congress—1774-1949*, H.R. Doc. No. 607, 81st Cong., 2nd Sess. 1729-30 (1950).

<sup>13</sup> 16 Stat. 67 (1870).

<sup>14</sup> Wharton, *The Negro in Mississippi, 1865-1890*, 167-68 (1947).

<sup>15</sup> *Id.* at 185.

<sup>16</sup> *Id.* at 186, 188.

<sup>17</sup> *Id.* at 186-96.

<sup>18</sup> *Id.* at 196.

<sup>19</sup> 4 Cong. Rec. 5280-81 (Aug. 8, 1876). The Report of the committee which investigated the Mississippi election of 1875 recommended that if the disorders continued, the State should be remanded to territorial status.

and ward of the town in which he lived and worked.<sup>20</sup> Any error or confusion in his response was used as a basis for rejection.<sup>21</sup> Despite this, Negroes continued to comprise a majority of the electorate.<sup>22</sup> But after 1876 they were allowed to vote and hold office only under the direction and control of the white minority.<sup>23</sup>

During these years white dominance was maintained by fraud and violence. Corruption became so pervasive that demands were raised to substitute a legalized disfranchisement of the Negro. In the words of one prominent white Mississippian:

Sir, it is no secret that there has not been a full vote and a fair count in Mississippi since 1875—that we have been preserving the ascendancy of the white people by revolutionary methods. In plain words, we have been stuffing ballot boxes, committing perjury and here and there in the State carrying the elections by fraud and violence until the whole machinery for elections was about to rot down.<sup>24</sup>

### THE CONVENTION OF 1890

Early in 1890 the Mississippi legislature called for a convention to prepare a new constitution.<sup>25</sup> The State of Mississippi, whose population at that time was almost 58 percent Negro, elected 134 delegates: 133 white men and 1 Negro.<sup>26</sup> When the convention met in August 1890, its purpose, candidly stated by the delegates, was to secure white supremacy:

The avowed purpose of calling [this] Convention was to restrict the negro vote \* \* \*<sup>27</sup>

\* \* \* \* \*

I will agree that this is a government of the people, by the people, and for the people; but what people? When this declaration was made by our forefathers it was for the Anglo Saxon people. That is what we are here for today—to secure the supremacy of the white race.<sup>28</sup>

\* \* \* \* \*

We want them [the Negroes] here, but their own good and our own demands that we shall devise some means by which they shall be practically excluded from the government control.<sup>29</sup>

\* \* \* \* \*

But, sir, this Constitution is not for the Democrats, but is for \* \* \* the white people of this State regardless of their party affiliations.<sup>30</sup>

\* \* \* \* \*

The white people of the State want to feel and know that they are protected not only against the probability but the possibility of negro rule and negro domination.<sup>31</sup>

Since the 15th amendment to the United States Constitution prohibited an express denial of the franchise to Negroes, the convention looked to

<sup>20</sup> Miss. Laws 1876, ch. 67, §§ 2, 5.

<sup>21</sup> Wharton, *op. cit. supra* note 14, at 200.

<sup>22</sup> Clarion Ledger (Jackson), Sept. 18, 1890, p. 5, col. 4.

<sup>23</sup> Wharton, *op. cit. supra* note 14, at 203.

<sup>24</sup> Judge J. B. Chrisman, quoted in Clarion Ledger (Jackson), Sept. 11, 1890, p. 1, col. 1.

<sup>25</sup> Miss. Laws 1890, ch. 35.

<sup>26</sup> Wharton, *op. cit. supra* note 14, at 211.

<sup>27</sup> Mr. McLaurin of Sharkey County, quoted in Clarion Ledger (Jackson), Sept. 25, 1890, p. 3, col. 3.

<sup>28</sup> Mr. McGehee of Franklin County, quoted in Clarion Ledger (Jackson), Sept. 18, 1890, p. 3, col. 3.

<sup>29</sup> Judge S. S. Calhoun, president of the Convention, quoted in Clarion Ledger (Jackson), Sept. 18, 1890, p. 3, col. 2.

<sup>30</sup> Mr. Edward Mayes, delegate at large, quoted in Clarion Ledger (Jackson), Sept. 18, 1890, p. 1, col. 3.

<sup>31</sup> Mr. W. S. Eskridge of Tallahatchie County, quoted in Clarion Ledger (Jackson), Sept. 18, 1890, p. 1, col. 3.

other seemingly neutral qualifications for electors to accomplish the same result. True to its purpose, "the convention swept the circle of expedients to obstruct the exercise of the franchise by the negro race."<sup>32</sup>

The first device chosen was a \$2 poll tax. The convention adopted an amendment establishing a poll tax and requiring a qualified elector to have: paid on or before the first day of February of the year in which he shall offer to vote, all poll taxes which may have been legally required of him and which he has had an opportunity of paying according to law, for the two preceding years. \* \* \*<sup>33</sup>

Although poll tax receipts were designated for educational purposes, it is clear that the primary purpose of the tax was to restrict the franchise. According to one writer, it was adopted because:

the leaders of the black counties were eventually able to persuade the convention that educational and property qualifications, with the addition of a poll tax, would be the best means of eliminating the negro vote.<sup>34</sup>

As a delegate observed: "The very idea of a poll qualification is tantamount to the State of Mississippi, saying to the Negro: 'We will give you two dollars not to vote'."<sup>35</sup>

A few years after the convention the Mississippi Supreme Court had occasion to describe the intent of the delegates who framed the tax:

It is evident, therefore, that the convention had before it for consideration two antagonistic propositions: One, to levy a poll tax as a revenue measure, and to make its payment compulsory; the other, to impose the tax as one of many devices for excluding from the franchise a large number of persons, which class it was impracticable wholly to exclude [by reason of the 15th Amendment to the United States Constitution] and not desirable wholly to admit. In our opinion, the clause was primarily intended by the framers of the constitution as a clog upon the franchise, and secondarily and incidentally only as a means of revenue \* \* \*.<sup>36</sup>

In 1934 the poll tax requirement was extended to primary elections.<sup>37</sup> It is currently required both for State primary and general elections in Mississippi.<sup>38</sup>

As the second major instrument of disfranchisement, the convention adopted a "literacy" test for registration. The test adopted required an applicant for registration either to read a section of the constitution *or* to understand the same when read to him *or* to give a reasonable interpretation thereof.<sup>39</sup> The reading clause would, one delegate noted, take advantage of the fact that "in Mississippi at least 10 percent of the white, and 60 percent of the colored population can neither read nor write."<sup>40</sup>

<sup>32</sup> *Ratliff v. Beale*, 74 Miss. 247, 266, 20 So. 865, 868 (1896).

<sup>33</sup> Miss. Const. art. 12, §§ 241, 243.

<sup>34</sup> Kirwan, *Revolt of the Rednecks, Mississippi Politics 1876-1925*, 68 (1964).

<sup>35</sup> Mr. Coffey of Jefferson County quoted in Clarion Ledger (Jackson), Sept. 12, 1890, p. 1, col. 1.

<sup>36</sup> *Ratliff v. Beale*, 74 Miss. 247, 268, 20 So. 865, 869 (1896).

<sup>37</sup> Miss. Code § 3130 (1956).

<sup>38</sup> Miss. Code §§ 3130, 3235 (1956).

<sup>39</sup> See Miss. Const. art. 12, § 244.

<sup>40</sup> Clarion Ledger (Jackson), Sept. 18, 1890, p. 5, col. 3.

The understanding and interpretation clauses were, according to proponents, "designed to furnish a loophole to qualify illiterate whites \* \* \*." <sup>41</sup>

No standards were provided to control the registrar's choice of constitutional section. In fact, at least one delegate commented that the registrar could determine who would qualify by choosing hard or easy sections of the constitution. <sup>42</sup>

The constitution of 1890 adopted by the convention was never submitted to or ratified by the people of Mississippi. <sup>43</sup> The Judiciary Committee of the convention determined that such ratification was not required for lawful adoption. <sup>44</sup>

The new constitutional provisions had quick and lasting effect. While in 1867 almost 70 percent of the Negro voting age population was registered, <sup>45</sup> by 1892, two years after the adoption of the new constitution, less than 6 percent of the Negro voting age population was registered. <sup>46</sup> In 1946 United States Senator Theodore Bilbo summed up the role of section 244:

The poll tax won't keep 'em from voting. What keeps 'em from voting is section 244 of the Constitution of 1890 that Senator George wrote. It says that a man to register must be able to read and explain the Constitution or explain the Constitution when read to him \* \* \*. And then Senator George wrote a Constitution that damn few white men and no niggers at all can explain \* \* \*. <sup>47</sup>

Section 244 remained unchanged until the early 1950's. Then, in June 1951, the United States Court of Appeals for the Fifth Circuit, in *Peay v. Cox*, <sup>48</sup> questioned a current practice requiring Negro applicants not only to read, but also to interpret sections of the constitution in apparent violation of section 244.

The following year the legislature proposed to legalize the practice questioned in *Peay v. Cox* by amending section 244 to require all applicants to read and interpret any section of the constitution. <sup>49</sup> This proposal was rejected in a referendum in the November 1952 election. <sup>50</sup>

The legislature met next in 1954, during a period of heightened racial feeling following the Supreme Court's school desegregation decision. <sup>51</sup> It again adopted a resolution to amend section 244 similar to the one rejected in 1952. This time the resolution also required the applicant to demonstrate "a reasonable understanding of the duties and obligations of citizen-

<sup>41</sup> Kirwan, *op. cit. supra* note 34, at 70.

<sup>42</sup> Judge J. B. Chrisman, delegate from Lincoln County, quoted in *Clarion Ledger* (Jackson), Sept. 11, 1890, p. 1, col. 1.

<sup>43</sup> Wharton, *op. cit. supra* note 14, at 214-15.

<sup>44</sup> *Clarion Ledger* (Jackson), Sept. 11, 1890, p. 6, col. 3.

<sup>45</sup> See chart, p. 8.

<sup>46</sup> *Ibid.*

<sup>47</sup> Quoted in *Colliers*, July 6, 1946, p. 28; verified by Senator Bilbo, *Hearings Before the Senate Special Committee to Investigate Senatorial Campaign Expenditures*, 79th Cong., 2nd Sess. 350 (1946).

<sup>48</sup> 190 F. 2d 123 (5th Cir. 1951).

<sup>49</sup> Miss. Laws 1952, ch. 434.

<sup>50</sup> *Delta Democrat Times* (Greenville), Nov. 7, 1952, p. 4, cols. 1 & 2.

<sup>51</sup> *Brown v. Board of Education*, 347 U.S. 483 (1954).

ship under a constitutional form of government.”<sup>52</sup> Exempted from its requirements were all persons registered before January 1, 1954, *i.e.*, about one-twentieth of the eligible Negroes and roughly two-thirds of the adult white population.<sup>53</sup> In the campaign for its ratification, the proponents claimed frankly that its purpose was “solely to limit Negro registration.”<sup>54</sup> The amendment was adopted by the electorate in November 1954, and implemented by the legislature in extraordinary session in January 1955. Section 244, as amended, currently controls registration in Mississippi.

Other provisions of the constitution of 1890 furthered Negro disfranchisement. Various disabilities to voting were imposed which were thought to reflect the racial characteristics of Negroes. The requirement of long residency, two years in the State and one year in the election district, was aimed at the supposed “disposition of young Negroes \* \* \* to change their homes and precincts every year.”<sup>55</sup> The disfranchising crimes were those to which Negroes were thought to be particularly prone: burglary, theft, arson, and obtaining money or goods under false pretenses. The more serious felonies of murder, rape, or assault were not included.<sup>56</sup>

The Supreme Court of Mississippi has described the intent of the delegates in choosing disqualifying offenses:

By reason of its previous condition of servitude and dependence, this [Negro] race had acquired or accentuated certain peculiarities of habit, of temperament, and of character which clearly distinguished it as a race from that of the whites—a patient docile people—but careless, landless, and migratory within narrow limits, without forethought, and its criminal members given rather to furtive offenses than to the robust crimes of the whites. Restrained by the federal constitution from discriminating against the negro race, the convention discriminated against its characteristics and the offenses to which its weaker members were prone.<sup>57</sup>

## THE WHITE PRIMARY

Section 244 and the other provisions of the 1890 constitution did not long remain the sole legal barrier to Negro political participation. Even in 1890 State leaders foresaw that the number of Negroes educationally qualified for the franchise would continue to increase. Many feared that:

It may be only a question of time when there will again be a majority of qualified negro voters in the State, and when it will become necessary to place further limitations on the elective franchise in order to secure the proper administration of the public affairs of the State.<sup>58</sup>

Prior to 1902 candidates for office were selected at a party convention. In that year the legislature provided that party nominations for State and local offices should thereafter be made by primary election. The State

<sup>52</sup> Miss. Laws 1954, ch. 427.

<sup>53</sup> *Ibid.*; Price, *The Negro and The Ballot In The South* 9 (Southern Regional Council, 1959).

<sup>54</sup> Jackson Daily News, Oct. 28, 1954.

<sup>55</sup> Mr. W. S. Eskridge, delegate from Tallahatchie, referring to speech made by Judge H. F. Simrall, delegate to the convention, quoted in Clarion Ledger (Jackson), Sept. 18, 1890, p. 1, col. 3.

<sup>56</sup> Miss. Const. art. 12, § 241.

<sup>57</sup> *Ratliff v. Beale*, 74 Miss. 247, 266; 20 So. 865, 868 (1896).

<sup>58</sup> Johnston, *Suffrage and Reconstruction in Mississippi*, 6 Publications of the Miss. Historical Soc’y 241 (1902).

executive committee of any party was authorized to exclude any person from its primary.<sup>60</sup> In the same year the Democratic executive committee for the 8th Congressional District, acting under this authority, resolved "That the election be restricted to white Democratic voters."<sup>60</sup> In 1903 Major J. K. Vardaman, candidate for governor, requested that only white Democratic voters be permitted to cast a ballot in the primary.<sup>61</sup> The Lafayette County Democratic executive committee then limited participation in the primaries in its county to whites only.<sup>62</sup> In 1907 the State committee resolved that "in addition to the qualifications prescribed by law for the voters in said primaries, all voters therein shall be white democrats."<sup>63</sup> Similar resolutions were passed by the State committee in subsequent years.<sup>64</sup> Since nomination by the Democratic Party in Mississippi was tantamount to election in all statewide, county, and most local elections, exclusion from the primary was, in effect, total disfranchisement.

Party elections remained closed to Negroes until 1944, when the Supreme Court held the white primary unconstitutional in *Smith v. Allwright*.<sup>65</sup> The next significant Mississippi primary following this decision preceded the 1946 Senatorial election. Although State and county committees took no action, Negroes attempting to vote were turned away by election officials, apparently acting on their own initiative.<sup>66</sup>

During the next two years the Mississippi legislature enacted measures to put the exclusion of Negroes from primaries on a basis designed to survive challenge under *Smith v. Allwright*. Laws were passed authorizing the party State executive committee to regulate primary elections and providing that no person would be eligible to participate in any primary unless he had been "in accord with the party holding such primary within the two preceding years," and "unless he is not excluded from such primary by any regulation of the state executive committee of the party holding such primary."<sup>67</sup> It was further provided that a person's qualifications and accord with the principles of the party could be challenged at the polls.<sup>68</sup>

The Democratic Party organization acted promptly. Beginning in 1948 it adopted principles endorsing racial segregation which were unacceptable to the great majority of Negroes.<sup>69</sup> These in turn were endorsed by a resolution of the State legislature.<sup>70</sup> The statutory requirement of accord with party principles remains in effect today. The most recent statement

<sup>60</sup> Miss. Laws 1902, ch. 66.

<sup>61</sup> Clarion Ledger (Jackson), July 24, 1902, p. 4, col. 6.

<sup>62</sup> Clarion Ledger (Jackson), June 25, 1903, p. 1, col. 2.

<sup>63</sup> Clarion Ledger (Jackson), July 16, 1903, p. 1, col. 6.

<sup>64</sup> Clarion Ledger (Jackson), June 6, 1907, p. 3, col. 5.

<sup>65</sup> See Record, vol. 1, pp. 568-69, *United States v. Mississippi*, 380 U.S. 128 (1965).

<sup>66</sup> 321 U.S. 649 (1944).

<sup>67</sup> *Hearings Before the Senate Special Committee to Investigate Senatorial Campaign Expenditures*, 79th Cong., 2d Sess. 120-21, 124-25, 140-41, 213-15, 225-28, 250-63, 281-84, 298, 317-20 (1946); *United States v. Mississippi*, 229 F. Supp. 925, 988-89 (S.D. Miss. 1963) (dissenting opinion).

<sup>68</sup> Miss. Code § 3129 (1956).

<sup>69</sup> *Ibid.*

<sup>70</sup> *United States v. Mississippi*, 229 F. Supp. 925, 989 (S.D. Miss. 1964) (dissenting opinion).

<sup>71</sup> Miss. Laws 1952, ch. 464.

of principles adopted at the Democratic State Convention on July 28, 1964, declares:

We believe in separation of the races in all phases of our society. It is our belief that the separation of the races is necessary for the peace and tranquillity of all the people of Mississippi and the continuing good relationship which has existed over the years.<sup>71</sup>

## RECENT DEVELOPMENTS

The success with which this system of election laws has operated to exclude Negroes is reflected in the following table of Negro and white registration at various times up to 1955.

Year	Negro voting age population <sup>a</sup>	Negro registration	Percent of Negro voting age population registered	White voting age population <sup>a</sup>	White registration	Percent of white voting age population registered
1867.....	98, 926	<sup>b</sup> 60, 167	66. 9	84, 784	<sup>b</sup> 46, 636	55. 0
1892.....	150, 409	<sup>c</sup> 8, 615	5. 7	120, 611	<sup>c</sup> 68, 127	56. 5
1896.....	198, 647	<sup>d</sup> 16, 234	8. 2	150, 530	<sup>d</sup> 108, 998	72. 4
1899.....	198, 647	<sup>e</sup> 18, 170	9. 1	150, 530	<sup>e</sup> 122, 724	81. 5
1955.....	495, 138	<sup>f</sup> 21, 502	4. 3	710, 639	<sup>f</sup> 423, 456	59. 6

<sup>a</sup> Nearest decennial census is used for each voting age population figure, male only for the census years 1870-1900; thereafter male and female.

<sup>b</sup> Jackson Weekly Clarion, Sept. 19, 1867, p. 2, col. 1.

<sup>c</sup> Wharton, *op. cit. supra* note 14, at 215.

<sup>d</sup> *Biennial Report of Secretary of State to Legislature of Mississippi for the Years 1896 and 1897*, 68.

<sup>e</sup> *Biennial Report of Secretary of State to Legislature of Mississippi for the Years 1898 and 1899*, 171.

<sup>f</sup> U.S. Department of Justice figures, statement of Burke Marshall, T. 257.

In 1957 Congress enacted legislation authorizing the Attorney General to bring suit to prevent denial of the right to vote based on race, color, or national origin.<sup>72</sup> This authority was strengthened by the Civil Rights Act of 1960 which required the maintenance and production of registration and voting records and authorized the appointment of voting referees where a pattern or practice of discrimination was found.<sup>73</sup> With this authority, the Department of Justice in 1960 began a program of investigation and litigation in Mississippi.

The Mississippi legislature responded by enacting laws imposing new qualifications for electors and by creating new obstacles to Federal litigation. In 1960 the legislature condemned the "vicious so-called Civil Rights Bill"<sup>74</sup> while it was being debated in Congress, and adopted a bill specifically authorizing the destruction of registration records.<sup>75</sup> Prior to this, these documents had been "a permanent public record."<sup>76</sup> It also adopted a constitutional amendment ratified in 1960 which "in addition

<sup>71</sup> 110 Cong. Rec. 20109 (daily ed. Aug. 20, 1964).

<sup>72</sup> 42 U.S.C. § 1971(c) (1958).

<sup>73</sup> 42 U.S.C. §§ 1971(c), 1974 (Supp. 1964).

<sup>74</sup> Miss. Laws 1960, ch. 510.

<sup>75</sup> Miss. Code § 3209.6 (Supp. 1962).

<sup>76</sup> Miss. Code § 3209.6 (1956).



to all other qualifications." required electors to be of "good moral character."<sup>77</sup> This amendment was implemented by legislation (discussed below) enacted in May 1962.<sup>78</sup>

The litigation program of the Department of Justice first bore fruit on April 10, 1962, when the Court of Appeals issued a temporary injunction directing the registrar of Forrest County to assist Negro applicants as he had previously assisted whites, to ignore insignificant errors and omissions on Negroes' forms, and to cease requiring that each unsuccessful Negro applicant wait six months before reapplying.<sup>79</sup>

This case was widely publicized in Mississippi and the legislature reacted promptly. On April 17 bills were introduced: (1) implementing the good moral character requirement already announced in section 241-A of the constitution; (2) strengthening an existing requirement that applicants execute a letter-perfect form wholly without assistance; (3) establishing the requirement that the names of applicants for registration be published in a local newspaper once a week for two weeks as an invitation to voters to challenge the qualification of applicants; and (4) directing the registrar not to advise rejected applicants of the reason for their rejection (except as to those rejected on account of bad moral character), since that would constitute illegal help. These bills were all enacted into law in May 1962.<sup>80</sup>

## REGISTRATION PROCEDURE

The registration procedure created by these and earlier laws currently operates in the following manner. An applicant for registration must go to the office of the registrar, which is usually in the county courthouse. The registrar gives him an application blank, the form of which is dictated by the State Election Commission, but the format of which varies considerably among the counties. (Appendix A shows a sample form). The applicant must then complete the form perfectly without any assistance.

Questions 1 through 17 request such information as the applicant's name, age, occupation, residence, citizenship, and criminal record. Question 18 requires him to copy a section of the Mississippi constitution selected by the registrar. Question 19 requires him to write an interpretation of the section he has copied. Question 20 calls for a description of the duties of citizenship under a constitutional form of government. Finally, he must sign the form in two places: under the appropriate oath and at the foot of the application.

After completing this test the applicant waits at least 30 days, during which time his name and address are published twice in a local newspaper. He is not notified at the end of the waiting period whether he has passed

<sup>77</sup> Miss. Const. art. 12, § 241-A.

<sup>78</sup> Miss. Code §§ 3212.5, 3212.7, 3217-01 to -15 (Supp. 1962).

<sup>79</sup> *United States v. Lynd*, 301 F. 2d 818 (5th Cir. 1962).

<sup>80</sup> Miss. Code §§ 3212.5, 3212.7, 3213, 3217-01 to -15 (Supp. 1962).

or failed. In order to determine this, he must return to the registrar's office. If he qualifies, he signs the registration book and becomes a registered voter. If he fails to qualify, he may take the test again.

It is a characteristic of this system that the registrar in each county has extremely broad discretion in determining the qualifications of applicants. He must determine whether the applicant is of good moral character, has demonstrated a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government, and has properly interpreted a section of the Mississippi constitution. The statutes do not prescribe any standards to control or guide the registrar in making these determinations.<sup>81</sup>

The history of Mississippi voting legislation makes it clear that stringent registration requirements were established and broad discretion vested in local registrars for one reason—to disfranchise Negro citizens. When barriers against Negro voting were threatened by new Federal laws in the 1950's, the Mississippi legislature reacted by making registration even more difficult. As Robert J. Farley, Dean Emeritus of the University of Mississippi Law School, put it in testimony before the Commission:

[Y]ou must remember that the last two legislatures have spent most of their time passing laws to fight the Federal government. \* \* \* We have been fighting Federal law with State law under guise of states rights \* \* \*.<sup>82</sup>

That the purpose of these laws has been largely achieved is evident from the table on page 11 which shows (1) the low rate of Negro registration in Mississippi compared with other States in the Deep South, and (2) the lack of any material progress in Negro registration in Mississippi during a time when new Federal laws were being enacted and changes were occurring in most other States.

The Commission conducted its investigation and hearing on voting to determine more precisely the way in which these laws have operated to prevent Negro registration and the extent to which other factors are responsible for the inability of Negroes to register and vote in Mississippi. The results of this investigation are described in the chapters which follow.

<sup>81</sup> Of the 19 States other than Mississippi which impose literacy tests, only Alabama, Georgia, and Louisiana require more than reading and writing. In Alabama the applicant is required to read and write and then to prove that he embraces the duties of citizenship under the Constitution of the United States and of Alabama by answering a set of questions on Alabama and Federal law, and answering questions on the interpretation of selected constitutional sections. Ala. Const. Amend. 91; Ala. Code Tit. 17 §§ 31-33 (1958).

In Georgia an applicant must either read and write a selected constitutional section, or pass an oral test showing his good moral character and understanding of the duties and obligations of citizenship under a republican form of government. Ga. Code Ann. §§ 34-617, 618 (1964).

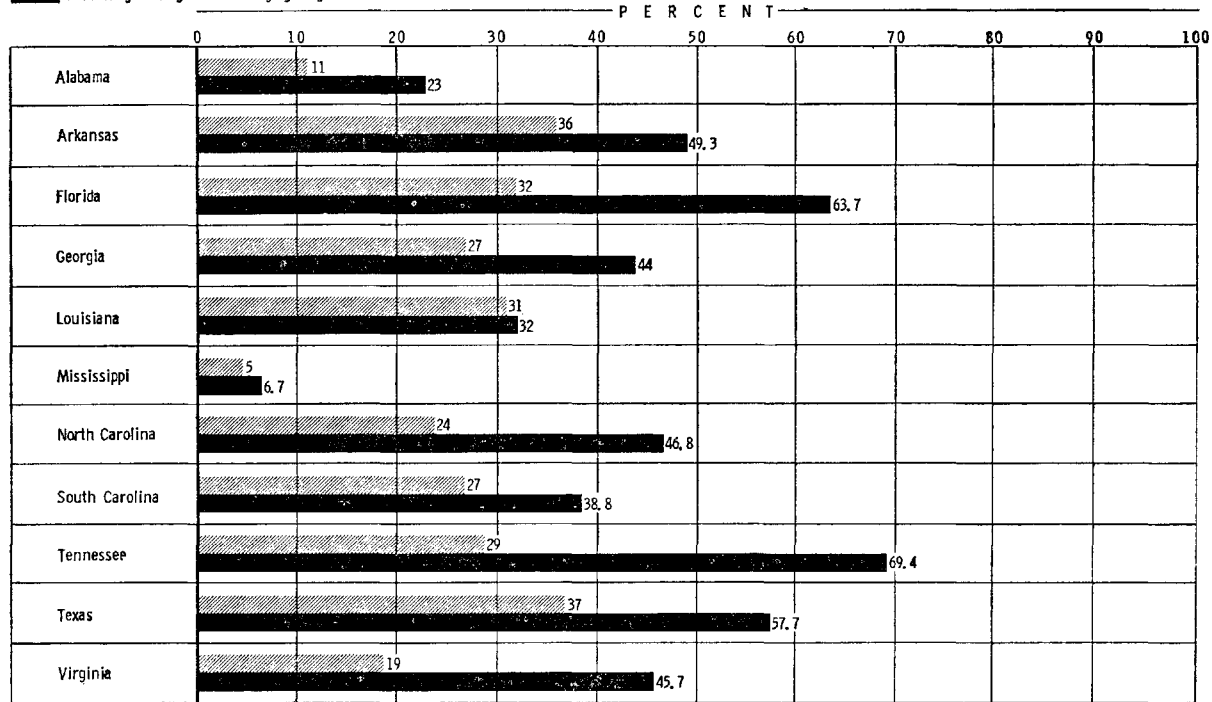
Louisiana requirements, except as modified by judicial decree in 21 parishes, see *United States v. Louisiana* 225 F. Supp. 353 (E. D. La. 1964), *aff'd*, 380 U.S. 145 (1965), call for filling out a detailed application form, writing sections of the Preamble to the United States Constitution from dictation, reading and interpreting any section of the United States or Louisiana constitutions, and answering questions comprising a citizenship test. La. Const. art. 8, §§ 1(c)-(f), La. Rev. Stat. §§ 18: 31, 32, 35, 36, 191A (Supp. 1962).

<sup>82</sup> *Hearing in Jackson, Miss., before the U.S. Commission on Civil Rights*, Feb. 16-20, 1965, Vol. II (in preparation).

## Estimated Negro Voter Registration in 11 Southern States in 1956 and 1964

▨ Percentage of Negroes of voting age registered in 1956

■ Percentage of Negroes of voting age registered in 1964



### SOURCES

1956 percentages: Price, *The Negro and The Ballot in the South* 9 (Southern Regional Council, 1959).

1964 percentages: Testimony of Wiley A. Branton, Director, Voter Education Project, Southern Regional Council, T 177-81.

## CHAPTER II. REGISTRATION TESTS AND POLL TAXES

The county registrar is the official charged by law with the duty of administering the registration test.<sup>1</sup> Mississippi law requires the State Board of Election Commissioners to appoint, as registrar, the clerk of the circuit court, who is an elected county official with a four-year term.<sup>2</sup> As indicated in the previous chapter, registration laws allow him broad discretion in determining who shall qualify as an elector. The Commission sought information on the way in which registrars were exercising this discretion.

### ADMINISTRATION OF THE REGISTRATION TEST

The Commission's investigation of registrars focused on three Delta counties. In all three there had been a Negro voter registration drive within the past year.

Issaquena County was chosen for the most extensive investigation. It is a sparsely populated agricultural county bordering on the Mississippi River at the southern edge of the Delta. Most of its farms are large plantations, and its largest town, Mayersville, has a population of less than 500. Negroes constitute 68 percent of a population of 2,700. When the Commission began its investigation in October 1964, 100 percent of the white voting age population was registered to vote, while none of the Negro population was registered.<sup>3</sup> In prior years only a few Negroes had attempted to register and they were not successful.<sup>4</sup>

In June 1964 civil rights workers began an organized registration effort in the county.<sup>5</sup> During the next seven months about 90 Negroes, approximately 10 percent of the voting age Negro population, attempted to register.<sup>6</sup> When the registration drive began the county sheriff visited several Negro residents, cautioned them against involvement with civil rights workers, and advised that they could safely visit the courthouse and attempt to register.<sup>7</sup>

When Negroes began attempting to register, the principal barrier they encountered was the conduct of the registrar. From July 1961 to February 10, 1965, approximately 150 forms were completed by white applicants

<sup>1</sup> Miss. Code § 3212 (1956).

<sup>2</sup> Miss. Code § 3204 (1956). An exception is provided if the circuit clerk is shown to be "an improper person."

<sup>3</sup> T. 27.

<sup>4</sup> T. 33-34.

<sup>5</sup> T. 28.

<sup>6</sup> T. 225.

<sup>7</sup> T. 40, 42.

and 128 by Negroes. The 128 represented multiple attempts by 90 Negroes. All 150 white applicants passed on their first attempt. Only nine Negroes passed, most after repeated attempts, and only after the initiation of Commission and Department of Justice investigations.<sup>8</sup>

The relative lack of success of Negro applicants resulted from three practices of the registrar: (1) discrimination in the choice of the constitutional sections; (2) discrimination in judging the interpretations and in application of the "letter-perfect" rule;<sup>9</sup> and (3) discrimination in rendering assistance to whites but not to Negroes. Although the registrar chose not to appear at the hearing, the application forms from the files, analyzed by Commission staff attorneys, evidenced her practices.<sup>10</sup>

During the two years preceding the first Negro effort, the period covered by the applications in her files, the registrar relied primarily on three of the shorter and less difficult sections of the Mississippi constitution in administering the interpretation test. Of the 133 white applicants who took the test during this period, 107 were given one of these three sections:

*Section 35.* The senate shall consist of members chosen every four years by the qualified electors of the several districts.

*Section 8.* All persons, resident in this state, citizens of the United States, are hereby declared citizens of the state of Mississippi.

*Section 240.* All elections by the people shall be by ballot.

The remaining sections used prior to July 3, 1964, were also, for the most part, short and easy to understand.<sup>11</sup>

After the first Negro attempted to register, the pattern changed. The registrar began choosing more varied and slightly more difficult sections for testing whites. While some Negroes received sections comparable to these, nearly one-half of them received very difficult sections.<sup>12</sup> Witnesses who appeared before the Commission had received sections on tax exemptions for corporations (§ 182), judicial sale of land (§ 111), eminent domain (§ 190), concurrent jurisdiction of chancery and circuit courts (§ 161), and habeas corpus (§ 21).<sup>13</sup> Not a single white applicant received any of these sections. The complexity of these provisions is illustrated by section 182, which provides as follows:

The power to tax corporations and their property shall never be surrendered or abridged by any contract or grant to which the state or any political subdivision thereof may be a party, except that the legislature may grant exemption from taxation in the encouragement of manufactures and other new enterprises of public utility extending for a period of not exceeding five years, the time of such exemptions to commence from date of charter, if to a corporation; and if to an individual enterprise, then from the commencement of work; but when the legislature grants such exemptions for a period of five years or less, it shall be done by general laws, which

<sup>8</sup> T. 30, 225.

<sup>9</sup> See p. 9, *supra*.

<sup>10</sup> The Commission subpoenaed both the registrar and her records. She declined to appear on the ground that her conduct as registrar was being challenged by the United States in *United States v. Vandevender*, Civil No. 1091 (W)(M), S.D. Miss., January 15, 1965. An agreement was reached whereby the Commission did not insist upon the registrar's appearance and was granted permission to examine her files in Issaquena.

<sup>11</sup> T. 225-26.

<sup>12</sup> T. 229.

<sup>13</sup> T. 29-30, 34, 36, 41.

shall distinctly enumerate the classes of manufactures and other new enterprises of public utility entitled to such exemptions, and shall prescribe the mode and manner in which the right to such exemptions shall be determined.

The other sections mentioned are of comparable difficulty.<sup>14</sup>

The records also show discrimination in the acceptance of answers. One white applicant, asked to interpret section 35 ("The senate shall consist of members chosen every four years by the qualified electors of the several districts"), wrote only "equible wrights" and was passed. Another successful white applicant's interpretation of this section read, "The government is for the people and by the people." Six white applicants left question 20 on the duties of citizenship blank and were passed. Six other white applicants failed to sign their applications, and 13 others mistakenly signed the special oath for ministers. All were passed.<sup>15</sup>

The registrar refused to accept Negro forms with similar deficiencies. Three Negro applicants were denied registration for failure to sign on the appropriate line.<sup>16</sup> Negroes also gave inadequate interpretations of constitutional sections, but unlike white applicants, they did not succeed in passing the test.

Beginning in November 1964, after Commission investigators and Justice Department attorneys had interviewed the registrar, a few Negroes were passed.<sup>17</sup> It appears that after October the registrar relaxed her standards for some Negro applicants. Mrs. Unita Zelma Blackwell, a leader of the registration drive, who had taken and failed the registration test on two prior occasions, testified about her third attempt in January 1965:

Mrs. BLACKWELL. I filled it out and I had section 97 and I wrote it down and looked it over and I picked some of the words out of, you know, what I had wrote down; put that in there and turned it over. And I misspelled "length" and I said "Oh, my Lord." And so then I filled out the rest of it and when I got through I handed it to her, and I said "Well, I misspelled this, and well, I didn't date the top," and she said "Oh, that's all right, it's all right, it's all right." And then she ran and got the book and [registered me].<sup>18</sup>

The forms provide evidence that the registrar had previously given assistance to white applicants. Many of the whites' forms bore similar or identical answers. Fifteen of the 48 whites who interpreted section 35

<sup>14</sup> Section 111. All lands comprising a single tract sold in pursuance of decree of court, or execution, shall be first offered in subdivisions not exceeding one hundred and sixty acres, or one-quarter section, and then offered as an entirety, and the price bid for the latter shall control only when it shall exceed the aggregate of the bids for the same in subdivisions as aforesaid; but the chancery court, in cases before it, may decree otherwise if deemed advisable to do so.

<sup>15</sup> Section 190. The exercise of the right of eminent domain shall never be abridged, or so construed as to prevent the legislature from taking the property and franchises of incorporated companies, and subjecting them to public use; and the exercise of the police powers of the state shall never be abridged, or so construed as to permit corporations to conduct their business in such manner as to infringe upon the rights of individuals or general well-being of the state.

<sup>16</sup> Section 161. And the chancery court shall have jurisdiction, concurrent with the circuit court, of suits on bonds of fiduciaries and public officers for failure to account for money or property received, or wasted or lost by neglect or failure to collect, and of suits involving inquiry into matters of mutual accounts; but if the plaintiff brings his suit in the circuit court, that court may, on application of the defendant, transfer the cause to the chancery court, if it appear that the accounts to be investigated are mutual and complicated.

<sup>17</sup> Section 21. The privilege of the writ of habeas corpus shall not be suspended, unless when in the case of rebellion or invasion, the public safety may require it, nor ever without the authority of the legislature.

<sup>18</sup> T. 227, 230-31.

<sup>16</sup> T. 231.

<sup>17</sup> T. 30-31.

<sup>18</sup> T. 30-31. Section 97 reads: "The legislature shall have no power to revive any remedy which may have become barred by lapse of time, or by any statute of limitation of this state."

gave, verbatim, the following answer: "To elect the Senate members every four years in order to get people who keep abreast of the times." One person gave the same answer, but omitted the word "abreast."<sup>19</sup> Fourteen of these same 15 persons described the duties of citizenship with the following: "To obey the laws of the state and serve in a useful capacity whenever possible." The other person gave substantially the same response.<sup>20</sup> Nine of the 21 applicants interpreting section 240 ("All elections by the people shall be by ballot") wrote: "Election of the people shall be held by secret ballot."<sup>21</sup> The word "secret" is not suggested by the wording of section 240. All nine also used identical words to answer question 20 on the duties of citizenship: "Obey the duties of the government and carry out the rules and laws to the best of your ability."<sup>22</sup>

The practices of the Issaquena County registrar are by no means atypical. At the time of the hearing the Department of Justice had brought 23 lawsuits against Mississippi registrars to eliminate the effects of discrimination in the registration process. In addition, an analysis of records from 31 counties shows that registrars in at least two-thirds of these counties have required Negroes to interpret more difficult sections of the constitution than whites. In virtually all of these counties the records show discrimination against Negroes in the grading of applications and in the furnishing of assistance.<sup>23</sup> The United States Court of Appeals for the Fifth Circuit described some of these practices in deciding the first Mississippi voting case to end in a final decree:

The Negro citizens were not treated in the same manner as the white citizen. The application was treated largely as an information form when submitted by a white person. It was a test of skill for the Negro. It was not even a test of literacy for the white, whereas any Negro applicant demonstrated his literacy in filling out the form. Much more difficult sections of the Constitution were given to the Negroes to write and construe than those given to the white applicants. Delay and refusal of deputies to serve the Negroes were uniform, whereas speed and dispatch, to the extent of permitting the applicant to sign immediately, were the lot of the white.<sup>24</sup>

The Commission also heard testimony on the administration of the constitutional interpretation test by the registrar of Humphreys County.

Humphreys County lies in the heart of the Delta. Negroes constitute 66 percent of its population of 19,000. At the time of the Commission's hearing in February 1965, approximately 68 percent of the voting age white population, but none of the Negro population, was registered to vote. No Negroes had even attempted to register between 1955, when one Negro registration leader was killed by a shotgun blast and another severely

<sup>19</sup> T. 226.

<sup>20</sup> *Ibid.*

<sup>21</sup> T. 227.

<sup>22</sup> T. 227-28. It is a measure of the registrar's lenience with white applicants that twelve of them were permitted to register, although by their own statements they did not meet the requirement of residence in Mississippi for two years prior to the election next ensuing after their application. T. 231-32.

<sup>23</sup> Record, Vols. 1, 2, pp. 775-1408, *United States v. Mississippi*, 380 U.S. 128 (1965).

<sup>24</sup> *United States v. Duke*, 332 F. 2d 759, 768 (5th Cir. 1964).

wounded, and August 1964, when a new registration drive began.<sup>25</sup> Between August and the time of the Commission's hearing, 16 Negroes had attempted to register, but none had succeeded in passing the test.<sup>26</sup>

The Humphreys County registrar, G. H. Hood, testified that in administering the test he followed the practice of choosing constitutional sections consecutively. When he reached the end of the 286-section constitution, he would begin again. Mr. Hood stated that he did not draw any distinction between hard or easy sections. Each section was given in turn.<sup>27</sup> This testimony was supported by records he submitted in response to the Commission's subpoena.

While Mr. Hood did not appear to discriminate in choosing sections, he did not eliminate very difficult sections, such as section 182, concerning the power to tax corporations, which the registrar of Issaquena County had reserved for Negro applicants. By using these sections he imposed a test which neither he nor the majority of white Mississippians had been required to take when they registered.<sup>28</sup> When asked at the hearing whether he could interpret this section, the following colloquy ensued:

Commissioner GRISWOLD. I hand you a copy of section 182 of the Mississippi constitution. Would you please make a reasonable interpretation of section 182 for the Commission?

(Pause.)

Mr. HOOD. You say 182?

Commissioner GRISWOLD. Yes.

Mr. HOOD. I'm sorry, sir. I've been reading 183.

(Pause.)

Mr. HOOD. Well, it means that the power to tax corporations, their property, shall never be surrendered or abridged by any contract. And—

Commissioner GRISWOLD. I didn't ask you to read it, Mr. Hood. I asked you to interpret it.

Mr. BRIDGES (Aside to Mr. Hood).

Commissioner GRISWOLD. Mr. Chairman, I think it should be the witness' interpretation; not his counsel's.

Mr. BRIDGES. If you please, gentlemen, the conference between the witness and his attorney had nothing to do with the question. It was a question whether he was to answer it or not.

Mr. HOOD. Which I will not.

Mr. BRIDGES. Which he will not.

Commissioner GRISWOLD. You decline to interpret section 182?

Mr. HOOD. On pressure being put on me before a Committee like this.

Commissioner GRISWOLD. On the ground that it may incriminate you?

Mr. HOOD. That's right.

\* \* \*

Commissioner GRISWOLD. I find it a little hard to see how citizens of Mississippi are expected to interpret the section if the registrar is unable to do so and he is the person who grades the interpretation which is made by a citizen of Mississippi.<sup>29</sup>

<sup>25</sup> T. 52.

<sup>26</sup> T. 74.

<sup>27</sup> T. 77-78.

<sup>28</sup> The constitutional interpretation test has been required of every applicant only since 1954, see p. 6, *supra*. Registrar Hood did not take an interpretation test. Since most registrars are appointed by virtue of being elected circuit clerk, they are not required to pass any examination or possess any qualifications other than being an elector.

<sup>29</sup> T. 78-79.



The administration of the registration test by the registrar of Washington County contrasts with the practices of officials in Issaquena and Humphreys Counties. Washington borders the Mississippi River north of Issaquena and has a population of 77,000, of which 56 percent is Negro. Greenville, the county seat, has been an industrial and cultural center of the Delta since the Civil War. It has a population of 41,000.<sup>30</sup>

Negro witnesses from Greenville testified that the county registrar applies the constitutional interpretation test without using the harder constitutional sections. An applicant draws a slip bearing one of a number of relatively easy sections from a box.<sup>31</sup> In the opinion of the witnesses, the registrar has been fair in his grading of the tests.<sup>32</sup>

The fairer administration of registration tests in Washington County accounts, in part, for the fact that it is one of a handful of Mississippi counties where Negro registration exceeds 10 percent. As of February 1965, Negro registration for Washington County was estimated at 2,500. Based on this estimate, Negro registration is approximately 12 percent of the 1960 voting age Negro population, which is significantly higher than in adjacent Delta counties. A local voter registration organization has been active since 1943, and was assisted by a number of civil rights organizations during 1964.<sup>33</sup>

While Negroes in Washington County fare better at the hands of the registrar than in most other Mississippi counties, the percentage of Negroes registered still falls far below average Negro registration in other Southern States.<sup>34</sup> In part this results from inferior educational opportunities afforded Negro citizens. Public schools are segregated in Washington County and the median education level is 5th grade for Negroes and 12th grade for whites.<sup>35</sup>

## COLLECTION OF THE POLL TAX

As described in Chapter I, payment of a poll tax was made a prerequisite for voting in Mississippi in 1890 to restrict or eliminate exercise of the franchise by Negro citizens. Since that time Negroes have experienced difficulty in certain counties in paying the tax. Under Mississippi law the sheriff is the tax collector. In 1955, when Negroes in Humphreys County started a voter registration drive, the sheriff refused to accept their poll tax payments until compelled to do so by court order.<sup>36</sup> Negroes seeking to qualify to vote for the first time experienced difficulty in paying poll taxes in Issaquena County in 1959.<sup>37</sup> Between 1956 and 1964, when the Department of Justice brought suit, the sheriff of Holmes County refused to accept

<sup>30</sup> T. 191.

<sup>31</sup> T. 192-93.

<sup>32</sup> T. 193, 200.

<sup>33</sup> T. 192-93.

<sup>34</sup> See p. 11, *supra*.

<sup>35</sup> T. 191. The extent of inequality of educational opportunity is discussed at length in Chapter V.

<sup>36</sup> T. 59.

<sup>37</sup> T. 33, 34.

poll taxes from Negroes.<sup>38</sup> Between 1948 and 1963, when the Department of Justice filed suit to enjoin the practice, officials in Chickasaw County allegedly refused to accept poll tax payments from Negroes.<sup>39</sup> In recent years, the Commission has also received complaints that Negroes had not been permitted to pay poll taxes in Amite, Bolivar, Jefferson Davis, and Tallahatchie Counties.<sup>40</sup>

There is evidence that officials have used more subtle methods than outright refusal to prevent Negroes from paying the tax. The sheriff of Tallahatchie County, where most whites but few Negroes had registered to vote, admitted that he instructed his deputies to require all persons paying poll taxes for the first time to apply to him personally. This requirement was voided by Federal court order in 1961.<sup>41</sup> A Carroll County witness described a different official technique:

Commissioner FREEMAN. Do the officers try to get the people to pay the poll tax?

Mr. ESKRIDGE. Well, they will ask every white person that come in there, and every Negro they won't say a word. I was in there paying taxes here in February, and every white person come in there, white women especially they ask them about paying tax. When I paid my tax, they hand me just my tax receipt and didn't ask for a poll tax. \* \* \*<sup>42</sup>

The Commission's investigation of registration practices indicated that the constitutional interpretation test, devised as an instrument of disfranchisement, is used in many counties to maximum advantage by the registrar to prevent any registration by Negroes or to limit such registration to token numbers. Even where the test is fairly administered it remains a significant impediment to Negro registration. In addition to overcoming the hurdle of registration, a Negro who wishes to vote must succeed in having his poll tax payment accepted by the sheriff for two successive years. Together, these requirements present a formidable obstacle to Negro registration and voting in Mississippi.

<sup>38</sup> *United States v. Holmes County*, 9 Race Rel. L. Rep. 229 (S.D. Miss. 1964).

<sup>39</sup> *United States v. Simpson*, C.A. No. F.C. 63101, filed Dec. 16, 1963.

<sup>40</sup> United States Commission on Civil Rights, Complaint Summary, May 23, 1963.

<sup>41</sup> *United States v. Dogan*, 314 F. 2d 767 (5th Cir. 1963).

<sup>42</sup> T. 100.

## CHAPTER III. INTIMIDATION, REPRISAL, AND FEAR

In all but a few Mississippi counties the number of Negroes registered to vote is so low that registration and voting are acts rendering the individual Negro conspicuous. In such counties the Commission found that fear of economic or physical reprisal influenced the individual Negro in determining whether to attempt to register or to vote. According to one Negro leader testifying before the Commission, Negroes "are afraid of physical violence, economic reprisals, losing jobs, or not getting jobs" as a result of such attempts.<sup>1</sup> The Commission's purpose in exploring this subject was to evaluate the extent to which such fears have inhibited Negro registration and voting.

### INTERFERENCE BY PUBLIC OFFICIALS

Incidents of violence at registration or polling places appear to affect seriously the willingness of Negroes to attempt to register or vote. Reprisal after attempted registration may produce a similar result. The Commission investigated allegations that such incidents had occurred in Humphreys, Tallahatchie, and Jefferson Counties.

In Humphreys County two elderly Negro women testified at the hearing that G. H. Hood, registrar of the county, abused them verbally when they attempted to register. Mrs. Mary Oliver Welsh, a woman in her 70's, described her conversation with the registrar:

Mrs. WELSH. Well, when I went to register, the registrar asked me what did I come down there for. I told him "to register."

He said, "register? For what?"

I told him, "to vote."

He said, "Vote? For what?"

And I told him I didn't know what I was coming to vote for.

He hollered at me and scared me so, I told him I didn't know what I came to vote for. I was just going to vote.<sup>2</sup>

Both Mrs. Welsh and Mrs. Daisy Griffin, her companion, rely upon government surplus commodities, such as flour, meal, and rice, for some of their food. Before going to the courthouse they had expressed concern to civil rights workers in Belzoni that an attempt to register would cost them their commodities. They both testified that when they attempted to register Mr. Hood warned them about commodities. In the words of Mrs. Welsh: "Well, he told me I was going to get in trouble, and he wasn't

<sup>1</sup> Testimony of Aaron Henry, T. 156.

<sup>2</sup> T. 55.

going to give me no commodities. That's what he said." Mrs. Griffin corroborated this testimony.<sup>3</sup>

When asked if she had passed the test, Mrs. Welsh replied: "Well, I didn't go back there. I didn't go back. After I went there and he scared me so bad, I didn't go back to see was I passed or no."<sup>4</sup>

Other Negro witnesses testified that this registrar had referred to commodities, questioned them about their motives in seeking to vote, or harassed them by tapping on the table with a pencil while they completed their forms.<sup>5</sup> In his testimony, Mr. Hood denied he had made the statements attributed to him.<sup>6</sup>

The Commission also investigated the conduct of the sheriff of Humphreys County towards Negroes who attempted to register. Negro witnesses testified that their pictures had been taken as they left the registration office.<sup>7</sup> The sheriff admitted he and his deputies had taken such pictures and submitted six prints of Negroes in response to the Commission's subpoena. He had not taken pictures of white applicants. He justified the photography by claiming that he wanted to show how peaceful Humphreys County had been in spite of the adverse publicity which the county and the State had received. Also, he said: "I wanted them for my own use. I take a lot of pictures." When asked whether he considered the effect which taking these photographs outside the registrar's office might have on Negro applicants, Sheriff Purvis replied, "I didn't consider it; no."<sup>8</sup>

In two cases the sheriff's office arrested Negroes shortly after they had attempted to register. In the first case, Mrs. Mary Thomas of Belzoni, a grocery store owner, applied for registration in September 1964. As she was leaving the registration office, someone snapped her picture. Fifteen minutes after arriving home she was arrested by a deputy sheriff, pursuant to a warrant issued that day. The charge against her was selling beer without a State license. She was taken to jail and bond was set at \$1,000. The following week she pleaded guilty and was fined \$365.71; in addition, county officials suspended her permit to sell beer for one year.<sup>9</sup>

The cost of the missing license was \$15. Mrs. Thomas had been selling beer for eight years without such a license prior to attempting to register. During this time and at the time of her arrest, she possessed a current Federal Tax Stamp, as well as State and municipal beer permits. Sheriff Purvis testified he did not know at the time Mrs. Thomas was arrested that she had applied for registration. Several weeks earlier he had sent out notices to some 40 persons that licenses were required. According to him, all except Mrs. Thomas paid the tax or stopped selling beer. He further testified that once, years ago, he had arrested a white man for selling beer

<sup>3</sup> T. 53-55.

<sup>4</sup> T. 56.

<sup>5</sup> T. 63, 64, 69.

<sup>6</sup> T. 75.

<sup>7</sup> T. 53, 64.

<sup>8</sup> T. 82.

<sup>9</sup> T. 64-65.

without a license in connection with a prosecution for selling whiskey in violation of the prohibition law.<sup>10</sup>

The second case involved Mrs. Alene Hunter of Belzoni, who attempted to register on January 4, 1965. Pursuant to law, her name was published in the *Belzoni Banner*, a local newspaper, on the seventh of January. The next day she was arrested at her home by a deputy sheriff on a charge of passing a bad check in the amount of \$5.15. It is a practice in some rural communities to secure a sale on credit by requiring the purchaser to sign a check for the amount of the credit even though the merchant knows his customer has no bank account. The storekeeper may then initiate criminal proceedings against the customer for passing a bad check in the event the bill is not paid. It appears that the check signed by Mrs. Hunter was of this character, since it was made out by the store owner and drawn on a bank at which Mrs. Hunter had never had an account.<sup>11</sup>

Mrs. Hunter testified concerning her arrest, as follows:

Mrs. HUNTER. On January the 8th I was at home making bed; the deputy sheriff came to my house and he asked me was I Alene Hunter; I told him yes.

He said, "Well, Alene, I came after you."

I said, "What for?"

He said, "Well, I didn't exactly come after you," he said, "but I have a warrant to pick you up for \$5.15." He said, "You owe it." I said, "Yes." I said, "I owe \$5.15 to the store." He said, "Do you have it?"

I said I had the \$5. But he said, "It's more now; it's \$12.15."

I said, "Well, I don't have the \$12."

"Well," he said, "you have to go with me."

\* \* \* \* \*

Mr. TAYLOR. Where did he take you?

Mrs. HUNTER. To the jail. And when I got inside the jail he sit at a desk, so he wrote something down on the book and he said, "Alene," he said, "when I turn this key on you it will be \$14.50. Do you know it?"

I said, "I'm going by what you say." So he put me in jail.<sup>12</sup>

Mrs. Hunter was released 15 minutes after she had been locked up. The deputy sheriff advised her that her fine had been paid but refused to say by whom. She felt she knew why she had been arrested:

Mr. TAYLOR. Why do you think you were arrested, Mrs. Hunter?

Mrs. HUNTER. Because I registered.<sup>13</sup>

Intimidation and reprisal by registrars or local officials against Negroes who have attempted to register is not confined to Humphreys County. There is a history of such practices in various parts of the State. In addition to reports of such incidents received by the Commission some of these cases have been the subject of judicial inquiry. In Walthall County in 1961 a voter registration worker accompanying Negro applicants for registration was struck by the registrar with the butt of a gun. Later that

<sup>10</sup> T. 66, 83, 88, 89.

<sup>11</sup> T. 70, 71, 84, 92.

<sup>12</sup> T. 70-71.

<sup>13</sup> T. 71.

day he was arrested and charged with breach of the peace. When the Federal Government intervened, the prosecution was dropped.<sup>14</sup> In Rankin County in 1963 the sheriff, armed with a blackjack, and several deputy sheriffs assaulted and beat several Negroes waiting in the registrar's office.<sup>15</sup> In Holmes County in 1963 two firebombs were thrown into the house of Hartman Turnbow, a local Negro farmer and a leader in the registration effort, a few weeks after he and others had attempted to register. Turnbow and four voter registration workers were arrested the next day on suspicion of arson. The grand jury returned a "no bill" on the arson charge, but indicted Turnbow and his wife for unlawful cohabitation. They pleaded guilty and paid the fine.<sup>16</sup>

## PRIVATE VIOLENCE

In Tallahatchie County, the Commission investigated the effect of threats of violence by private citizens on the registration and voting process. Tallahatchie is an agricultural county at the eastern edge of the Delta with a population of 30,000, of which approximately 53 percent is Negro.<sup>17</sup> The county is particularly significant because of the contrasting progress of registration in neighboring Panola County. In both counties the Department of Justice had been successful in simplifying the registration test.

On October 16, 1961, the Department of Justice brought an action against the Panola County registrar<sup>18</sup> and a month later, a similar suit was instituted against the Tallahatchie registrar.<sup>19</sup> At the time, there was one Negro registered in Panola County and none in Tallahatchie.<sup>20</sup>

In May 1964 the District Court directed the Panola County registrar to cease using the constitutional interpretation test. The Court further directed him to register Negroes who demonstrated literacy by completing the preliminary questions concerning name, age, and residence, and by copying a brief section of the Mississippi constitution. Under the decree they were entitled to such help as they might need.<sup>21</sup> A month later a Federal District Judge ordered the Tallahatchie County registrar to register all applicants who were able to complete the preliminary questions. Under this decree, applicants were not required to copy or interpret any constitutional section.<sup>22</sup>

By the end of November 1964, about a thousand Negroes had succeeded in registering in Panola County while only 64 Negroes in Tallahatchie County had attempted to register.<sup>23</sup> The Commission sought to determine

<sup>14</sup> See *United States v. Wood*, 295 F. 2d 772 (5th Cir. 1961), cert. denied, 396 U.S. 850 (1962).

<sup>15</sup> See *United States v. Edwards*, 333 F. 2d 575 (5th Cir. 1964).

<sup>16</sup> See *United States v. Holmes County*, 9 Race Rel. L. Rep. 229 (S.D. Miss. 1964).

<sup>17</sup> T. 121-22.

<sup>18</sup> *United States v. Duke*, 332 F. 2d 759, 760 (5th Cir. 1964).

<sup>19</sup> *United States v. Cox*, Civil No. D-C-53-61, N.D. Miss., Nov. 27, 1961.

<sup>20</sup> *United States v. Duke*, supra note 18; Department of Justice, 1964 Status Report, pt. I, 52.

<sup>21</sup> See *United States v. Duke*, supra note 18.

<sup>22</sup> *United States v. Cox*, supra note 19, decree entered, June 24, 1964.

<sup>23</sup> T. 122, 145, 259.

the factors producing such a wide difference in Negro registration attempts under similar circumstances.

In August 1964, the first group of Negroes in Tallahatchie attempted to register under the new court-imposed system. They were accompanied by civil rights workers and Justice Department representatives. When they reached the county courthouse, 25 to 30 white spectators were standing outside with several county law officers. The Negroes were directed to stand on the lawn outside the courthouse and permitted to enter four at a time to register. Each applicant was photographed as he approached the registrar's office. While the second group of four was taking the test, those who had finished were directed to stand outside in the yard. A Negro witness, Mr. Jesse Brewer, described the scene:

When we got back out there, there were about 65 gathered around there. A lot more white people drove up there in pickup trucks with gun racks on them. They had guns on them and one ranch wagon comes with three white men with guns and they told us, "you niggers get away from the courthouse. You don't have any business up here." They circled the courthouse about three or four times and when they registered all the people who were up there, the sheriff told us, we did what we came up there to do and to get out of town \* \* \*.<sup>24</sup>

As the Negroes drove away, they were followed by the ranch wagon and cursed by its occupants. The Justice Department attorneys who had accompanied Mr. Brewer left him at the entrance to the dead-end road leading to his home. Shortly thereafter, two pickup trucks drove up.

Mr. BREWER. After they passed the house they stopped, parked, got out and turned around and came back and drove around slow, and between that time and night I reckon seven, eight cars came in, pickups, and all of them had these same gun racks in the back of them and the guns, and these two to three guns, in the back window of the truck where you could see.

\* \* \* All night after twelve o'clock they would come in. Sometime they would have the lights off, two or three at a time \* \* \* so when they got up near the house they would flash the lights on, go on by and cut them back off. That went on regularly for 3 weeks, I know.

\* \* \* \* \*

Commissioner HESBURGH. Mr. Brewer, were you afraid when all of this was going on?

Mr. BREWER. Ycs, sure was.<sup>25</sup>

According to Mr. Brewer this experience was directly responsible for the failure of at least one group of Negroes to attempt to register.

Mr. TAYLOR. Is what happened to you known to other people in your community?

Mr. BREWER. Well, no sir. Well, they know I went down to register. I didn't tell them the bad part of it. I told them the good part because 35 or 40 had promised they would go the next day.

Mr. TAYLOR. You don't think the word got around about the cars around your house, the trucks around your house?

Mr. BREWER. That was the reason why they didn't go the next day because they seen all them cars and guns and everybody. They got scared and in fact they didn't go into the field for about the next week. They stayed hid in the woods, everybody.<sup>26</sup>

<sup>24</sup> T. 131-32.

<sup>25</sup> T. 136-37.

<sup>26</sup> T. 139-40.

In Panola County there were few reported incidents of violence or intimidation accompanying Negro registration. Civil rights workers were able to operate effectively and the success of the registration drive was attributed by witnesses to their activities.<sup>27</sup> A similar drive did not occur in Tallahatchie because the workers were reportedly "afraid to come to Tallahatchie and work" and because local Negroes were afraid to house them.<sup>28</sup> With these incidents of violence and the absence of encouragement from the outside, few Negroes were willing to attempt to register in Tallahatchie County.

Fear of violence may not only deter registration but in rural counties may also prevent voting. Registration takes place at the county courthouse, while ballots are cast at polling places frequently located in isolated rural areas. The Commission heard testimony from several Negroes who were able to register but who were prevented from voting or afraid to vote.

One witness, Mr. James Rayburn, who had registered in 1963, attempted to vote in that year. He believed himself to be the only Negro registered to vote in his election district. As he approached the rural polling place at Dogwood Flats he was met by a white man who stopped him outside the building: "He asked me where I was going. I told him I was going to vote. The white man said, 'Well, you won't vote here,' and he begun to curse." The witness then entered the polling place. Inside another white man informed him that the election officer was absent.

Mr. RAYBURN. He \* \* \* walked back to the door and said, "you go out there and \* \* \* wait out there under that tree." And I stood and looked at him and said, "Under the tree?" He said, "Yes, go out there and wait under the tree." And I walked off and the man that challenged me as I was going in, he challenged me again and this time he had a stick with a piece of iron on it.

He asked me where did I live. I told him. Asked me my name. I told him. He said "I'll make sure"—he cursed again—"that you won't vote no more. You vote now, you won't vote any more."

I would have voted if they would have allowed me, regardless of what he said. But see, the man in there told me to go out and get under the tree, and I knew out under the tree wasn't no place to vote, and I didn't sit around because he might have been building up to most anything. You could see he had a knife or pistol or something and I had just nothing but my hand, and that's just Negro bone.<sup>28a</sup>

When asked what he was told would happen if he voted, Mr. Rayburn replied: "They would kill me." He left the polling place without voting and said he did not dare return to vote in November 1964.

Vice Chairman PATTERSON. You said you didn't want to go alone to Dogwood Flats to vote. Would you go alone now?

Mr. RAYBURN. I would. I believe I would, but I would seek better protection, or some protection.

Vice Chairman PATTERSON. Where would you go to get that protection?

<sup>27</sup> T. 146.

<sup>28</sup> T. 130.

<sup>28a</sup> T. 122, 123, 127, 128.



Mr. RAYBURN. Possibly I [would] have to pull several different strings. I might not go directly to the law, but I might pull the strings with some fellows who would have influence over the law.

Vice Chairman PATTERSON. A white man?

Mr. RAYBURN. Yes.<sup>28b</sup>

Another witness, Mrs. Adlena Hamlett, a retired school teacher, was one of the first Negroes to register in Tallahatchie. She had registered to vote in 1962. When her name was published in the newspaper pursuant to State law, she returned home to find a life-sized effigy of a woman hung above her mail box. Asked why she thought this was done, she testified, "to scare me." Although she did go to the county seat to register, she said that fear of violence made her unwilling to go to her polling place to vote in the elections which followed.<sup>29</sup>

In Jefferson County, located in southwest Mississippi, the voting age Negro population is approximately 3,500—more than double that of the white. Yet only a single Negro is registered.<sup>30</sup> The Commission heard testimony of an attempt to register by two Negro families which resulted in a visit from the Ku Klux Klan. Mrs. Dorothy Mae Foster stated that she, her husband, brother-in-law, and sister-in-law took the registration test in September 1963. A few weeks later she and her sister-in-law were each visited by a party of five men who warned them to withdraw their names. They handed her a card.

Thousands of Klansmen  
*Watching . . . Waiting!*

# ***Ku Klux Klan***

**DON'T BE MISLED!**

**Let Your Conscience Guide You!**

Mrs. Foster replied, "Those names are signed in ink and they are there to stay." One of the men answered that someone would return. None of their group succeeded in passing the test and they were not visited again.

<sup>28b</sup> T. 123, 125, 127.

<sup>29</sup> T. 141.

<sup>30</sup> Department of Justice, 1964 Status Report, pt. II, 24.

Since that time, no Negroes are known to have attempted to register in Jefferson County.<sup>31</sup>

## THE LEGACY OF VIOLENCE

Violence in reprisal for registration or voting has an immediate impact upon the willingness of Negroes to attempt to register or vote. A history of violence may have a similar impact even in the absence of recent incidents. In a county with a history of repeated episodes of brutality by law enforcement officers or where night riders have engaged in violence, Negroes may be expected to approach the registration process with great hesitation. Their apprehension is magnified when recent incidents of violence or reprisal in other areas in Mississippi or in neighboring States suggest that past practices in their county may be revived. The feeling of fear has become so ingrained that one witness described it as, "an inherent pattern, \* \* \* [a] reluctance to come forward on all matters \* \* \* something that is handed down \* \* \* from one generation \* \* \* to another."<sup>32</sup>

A history of violence appeared to be an important contributing factor preventing Negro political participation in Carroll County. This county lies in the hills at the eastern edge of the Delta. While Negroes make up roughly half the voting age population of 5700, only five were registered to vote at the time of the hearing.<sup>33</sup> Four had been registered in 1959 following the voiding of a murder conviction on the ground that Negroes had been systematically excluded from the jury rolls.<sup>34</sup> Because Mississippi law at that time required jurors be drawn from among registered voters,<sup>35</sup> the sheriff requested the four to register and the registrar assisted them.<sup>36</sup>

One of the Negro farmers who had been registered in this way, Mr. Jake Cain, subsequently asked the former registrar who had helped him to register, whether he would be allowed to vote. He was told that there might be trouble and that he should see the sheriff. This Mr. Cain was unwilling to do:

But I wanted him since he guided me in the registering. I wanted him to guide me through the voting. I wanted him to go like he did when he registered me, for some protection. But, he wouldn't go, didn't go. He told me to go alone.<sup>37</sup>

He never attempted to vote. Asked why, Mr. Cain replied, "Well, he was raised kind of on the atmosphere that kept us under the fear of even asking, going up to vote."<sup>38</sup>

<sup>31</sup> T. 149-50.

<sup>32</sup> Testimony of Joseph H. Bivens, T. 194.

<sup>33</sup> T. 93.

<sup>34</sup> T. 102-03; *United States ex rel Goldsby v. Harpole*, 263 F. 2d 71 (5th Cir. 1959).

<sup>35</sup> Miss. Const. art. 14, § 264 (1890).

<sup>36</sup> T. 100.

<sup>37</sup> T. 103.

<sup>38</sup> *Ibid.*

The atmosphere of danger in Carroll County is rooted in a history of violence by its white community against local Negroes. The incidents, which are part of the county's folklore, began with a mass killing of Negroes attending a trial in the county courthouse in 1886. Mr. Cain, who is 78 years old, described in testimony how his father had been wounded and his uncle killed at the courthouse on that occasion:

Mr. CAIN. Well, my father was in that riot or mob or whatever they would call it because the white people said that it was a riot, but the older folks said it was a mob, I know my father was shot through and through. He was shot back under his left breast there and it came out under his shoulder blade there, the bullet hole; I mean the scar showed on his, just under his left shoulder blade, and his brother were killed on the steps of the courthouse at the same time. My father said he jumped from the upper stair, upper deck, down and ran until he ran to the corporate limits of the town, and thereby he fell, but he did recover, God knows it.<sup>39</sup>

Continuing violence has reinforced the tradition. As William Eskridge, a former school teacher described it:

Now, mind, this continues; this didn't stop there. We had less violence, but it continued throughout the years. Whenever a colored person was killed, nothing done about it. Whenever a white man got ready to hit one over the head, he hit him over the head and asked him if he liked it, and he had to tell him that he did.<sup>40</sup>

Both Mr. Eskridge and Mr. Cain agreed, however, that the situation in Carroll County was improving. Recent sheriffs had stopped violence by subordinate law enforcement officials and there was less fear in the Negro community. Encouraged by what seemed to be some change in attitude, Mr. Cain asked his grown daughter, the only one of his seven children remaining in Carroll County, to attempt to register.

Mr. CAIN. I spoke to my daughter there a few months ago, \* \* \* it seems to have softened up some. I asked her if she would go and she said "I about make up my mind but everytime I go to the courthouse something tells me not to go in." But this time she says when she went in to pay her tax, something told her to go in, so she went in and took the test, but how she came out I couldn't tell you.<sup>41</sup>

Her fear in making an attempt to register was reflected in Miss Cain's testimony.

Mr. TAYLOR. Miss Cain, did you attempt to register this time?

Miss CAIN. I did.

Mr. TAYLOR. Have you ever gone to the courthouse before to try to register?

\* \* \* \* \*

Miss CAIN. Yes, I have, but that was my first time to attempt to register.

Mr. TAYLOR. You had gone to the courthouse before but had not gone in to register?

Miss CAIN. I was afraid.

Mr. TAYLOR. But, this time you decided to?

Miss CAIN. I decided.

\* \* \* \* \*

<sup>39</sup> T. 104. A detailed account of the incident is given in Wharton, *The Negro in Mississippi, 1865-1890*, 223-24 (1947). See also Witty, *Reconstruction in Carroll and Montgomery Counties*, 10 Publications of the Miss. Historical Soc'y 134 (1909).

<sup>40</sup> T. 97.

<sup>41</sup> T. 103.

Commissioner RANKIN. Miss Cain, you have talked about registering; haven't you?

Miss CAIN. Yes, I have.

Commissioner RANKIN. And, it is fear that keeps them from trying to register? Is that correct?

Miss CAIN. That's correct.

\* \* \* \* \*

Commissioner RANKIN. Do you agree with you father that it's better to go one by one than for a group to go down?

Miss CAIN. Well, I agree maybe more than one by one, but I wouldn't—

Commissioner RANKIN. You would like to have had somebody with you; is that right?

Miss CAIN. Well, I wasn't alone because I had prayed, and I believed that Somebody was with me. That's why I had the courage that I had when I went there. \* \* \*<sup>42</sup>

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<sup>42</sup> T. 104, 108.

## CHAPTER IV. ECONOMIC DEPENDENCE AND FEAR OF ECONOMIC REPRISAL

Since its organization in 1957 the Commission has received numerous reports from Mississippi of economic intimidation and reprisal in connection with registration and voting. At the hearing the Chairman of the Mississippi Advisory Committee to the Commission reported:

Many other witnesses appearing before the advisory committee testified that those seeking to register to vote have been fired from their jobs, have had their loans called in, and their credit cut off, have been forced to leave their homes, and, in many cases, have been subjected to acts of physical violence.<sup>1</sup>

Even before the hearing had closed, the Commission received a complaint that during the preceding two weeks three Negro residents of Carroll County had been discharged from employment following their attempt to register.<sup>2</sup> While it is often difficult to determine whether a discharge or other economic sanction has been imposed in reprisal for registration,<sup>3</sup> Commission investigation revealed that charges of such reprisal are widely circulated and that large numbers of Mississippi Negroes fear the economic consequences of an attempt to register and vote. This belief was reflected in the testimony given by Aaron Henry, a leader of the NAACP in Mississippi:

Any step which will bring a Negro into the public view, in an effort to register to vote, will increase the likelihood that an employer, or a creditor, or landlord will deprive him of the economic necessities of life.

This problem is amplified manifold by the extreme degree of poverty which exists among the Negro communities of Mississippi. To take an economic risk in Mississippi is to risk life itself.<sup>4</sup>

### ECONOMIC DEPENDENCE AND LOW INCOME

Fears of economic reprisal are rooted in the economic dependence of Negroes on whites in Mississippi. Most Negroes look to whites for employment, for loans, for credit to purchase food, seed and fertilizer, for use of farm equipment, or for a monthly welfare check.

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<sup>1</sup> T. 18.

<sup>2</sup> U.S. Commission on Civil Rights, Complaint File No. 5099.

<sup>3</sup> In a few cases, such as the arrest of Mrs. Alene Hunter a few minutes after she returned from attempting to register, the circumstances demonstrate that the action was taken in reprisal for the attempt. See p. 23, *supra*. In other cases investigated by the Commission Staff, such as the discharge from public employment of a cook whose son had been involved in civil rights activity (Commission Staff Report on Sunflower County dated December 3, 1964), the link between the economic sanction and the assertion of the right to vote is less clear.

The pattern of dependence appears particularly strong where Negroes are employed in agriculture. In the counties studied by the Commission between 60 and 85 percent of the Negroes were so employed.<sup>5</sup> In 1959 about 35 percent of Mississippi's total Negro employment was in agriculture, while the comparable figure for white agricultural employment was about 13 percent.<sup>6</sup> Approximately 60 percent of the Negro farmers worked as tenants, most of them on land owned by whites.<sup>7</sup> Most of these tenants are classified as "croppers." Croppers differ from other farm tenants in that they are subject to close supervision by the landlord or his agent and are dependent upon them for work animals or tractor power.<sup>8</sup>

Witnesses at the hearing from predominantly agricultural counties testified that the fear of economic reprisal prevented Negroes from attempting to register or vote. In Issaquena County Negro farmers were reportedly "afraid to go [register] and get cut off their welfare and get thrown off the farms and everything else \* \* \*."<sup>9</sup>

A witness from Humphreys County testified that Negroes were afraid to come forward and register. Asked why, he replied, "They're afraid they'll lose their jobs, afraid of not getting money \* \* \*."<sup>10</sup>

A Negro witness from Carroll County, who attempted unsuccessfully to persuade Negroes to register, testified that Negroes told him that they would be denied credit if they made the attempt.<sup>11</sup>

A witness from Tallahatchie County reported that Negroes were afraid of "economic squeezes."<sup>12</sup> Another believed that economic reprisal was the reason law enforcement officers photographed registration applicants: Well, I thought [the photographing] meant just about what it did mean, that they take your picture and if you had any credit with anybody they probably give them a picture to let them know you were up there and they probably cut out your credit \* \* \*<sup>13</sup>

The fears generated by dependence have been sharpened by extreme poverty. In 1959 the median income of Negro men in Mississippi was \$984 a year, and of Negro women, \$596 a year. White men in Mississippi earned more than three times as much as Negro men, and white women earned more than twice as much as Negro women. In 1959 more than 70 percent of occupied Negro rural housing was classed by the Bureau of Census as deteriorated or dilapidated—which means that the structures were becoming, or had become, unfit for human habitation. More than three-quarters of rural Negro homes were without plumbing.<sup>14</sup>

<sup>5</sup> T. 27, 52, 93, 110, 122.

<sup>6</sup> *Hearings in Jackson, Miss. Before the U.S. Commission on Civil Rights*, Feb. 16-20, 1965, Vol. II (in preparation), *Economic Status of Negroes in Mississippi* (hereinafter cited as *Economic Status*).

<sup>7</sup> *1959 Agriculture Census*, Vol. I, pt. 33, table 17 at 34-35; *1954 Agriculture Census*, Mississippi, Vol. III, pt. I, table 2 at 416.

<sup>8</sup> *1959 Agriculture Census*, Vol. I, pt. 33 at XXIII.

<sup>9</sup> T. 28.

<sup>10</sup> T. 59.

<sup>11</sup> T. 96.

<sup>12</sup> T. 129.

<sup>13</sup> T. 139.

<sup>14</sup> *Economic Status*.

In the counties studied by the Commission, median yearly income for Negro families ranged from \$885 in Carroll County to slightly more than \$1,600 in Washington County. The range for white families in the same counties was \$2,500 in Carroll to \$5,600 in Washington.<sup>15</sup> In the Delta Negroes cut and chop cotton in the late spring and early summer at \$3 per ten-hour day.<sup>16</sup> In the fall they pick cotton for approximately \$4 per ten-hour day.<sup>17</sup> The near destitution of many Negroes makes any economic reprisal a major disaster.

The poverty of Mississippi Negroes also affects their ability to comply with Mississippi voting laws. A Negro desiring to qualify to vote for the first time must pay \$4 in poll taxes.<sup>18</sup> At the wage rates prevailing in the Delta, many Negroes would need a day or more of labor to earn this amount. Payment of the tax for each adult would constitute a significant expenditure for a family whose yearly income is less than \$1,000.

Under Title I of the 1964 Civil Rights Act an applicant for registration is entitled upon written demand to receive a copy of any literacy test.<sup>19</sup> Witnesses testified that the registrar of Issaquena County charged \$2.50 for such copies<sup>20</sup> and the registrar of Humphreys County testified that he charged \$1.50.<sup>21</sup> While the 1964 Act does not specify that no charge should be made, the imposition of fees in these counties has inhibited the exercise of a right conferred by Congress.

## TEACHERS

Economic dependence and fear of economic reprisal are not confined to Negroes in the lowest economic status. Frequently Negroes with relatively good economic positions or with superior education are those who feel most vulnerable to the white community. School teachers and public employees with incomes well above the Negro median rely on white officials for their employment. In short, Negroes with the most to lose may be among the first to be deterred from registration or voting by the fear of economic consequences.

Among the best educated and best paid Negroes in Mississippi are the public school teachers.<sup>22</sup> Prior to its recent investigation in Mississippi, the Commission had received reports that in some counties Negro teachers had failed to attempt to register because of fear of economic reprisal.

<sup>15</sup> T. 27, 52, 93, 110, 122, 148, 191.

<sup>16</sup> United States Bureau of Employment Security, *In Season Farm Labor Reports*, No. ES 223 (June 15, 1964); T. 31.

<sup>17</sup> This is based on a "piece" wage of \$2.50 per hundred pounds of cotton. A farm laborer can pick an average of 160 pounds of cotton a day. United States Bureau of Employment Security, *In Season Farm Labor Reports*, No. ES 223 (September 30, 1964).

<sup>18</sup> A \$2 poll tax must be paid for the two years preceding the election. Miss. Const. art. 12, §§ 241, 243.

<sup>19</sup> 42 U.S.C.A. § 1971(a)(2)(C)(1964).

<sup>20</sup> T. 31, 36, 41, 46.

<sup>21</sup> T. 74.

<sup>22</sup> For information on the salaries of Negro teachers see Ch. V.

At the hearing the Commission heard testimony from the Executive Secretary of the all-Negro Mississippi Teachers Association. He stated that Negro teachers in Mississippi failed to register or vote because "they are afraid that they will lose their jobs. Their principal has been informed by their superintendent of education \* \* \* if you try to register in this system, you won't have a job next year." He further stated that in his opinion teachers in many Mississippi counties were justified in this fear. He emphasized that all superintendents of education in Mississippi were white.<sup>23</sup>

Two other witnesses, both of whom had taught school for many years in Mississippi, told the Commission that they knew of no Negro teachers registered to vote in their respective counties. One witness, a retired teacher, testified that he was the only teacher registered to vote in Carroll County. In the 1950's he had attempted unsuccessfully to convince other Negro school teachers to register. When asked why his efforts had failed, he replied:

My opinion is they were afraid of their job. In the first place some of the teachers in the school went to the courthouse and paid their poll tax. The superintendent \* \* \* heard of it and called them in and let them know if they are going to register for voting they wouldn't have a job, and consequently everybody had to back up.<sup>24</sup>

Another retired teacher, who had taught school for 35 years in Tallahatchie County, testified she knew of no other Negro teacher in her county who was registered to vote. She became a registered voter only after she retired from teaching and began receiving social security payments.<sup>25</sup>

To determine the extent to which Negroes were inhibited from registering or voting the Commission contracted with the National Opinion Research Center of the University of Chicago for a survey of political participation by Negro teachers in Mississippi. Professor James W. Prothro of the University of North Carolina, an expert in the field of Negro voting, was retained as a consultant.<sup>26</sup> Four counties with differing rates of registration were designated for the survey. A sample of teachers in each county was selected and the teachers were interviewed by professional interviewers from the National Opinion Research Center during December 1964 and January 1965. The persons interviewed were given assurances of anonymity; for this reason the names of the counties are not given in this report. Table I shows the number of teachers in each sample and the number of completed interviews.

Of those teachers who were interviewed, the number registered varied from 73.9 percent in County W to zero percent in County Z. Table II shows the percentages registered.

<sup>23</sup> Testimony of L. P. Alexander, T. 216, 218.

<sup>24</sup> T. 95-96.

<sup>25</sup> T. 143.

<sup>26</sup> The discussion which follows is drawn from Professor Prothro's report. T. 242-55.



The findings of the report indicate that in counties where few teachers had registered there were also few attempts to register. Table III shows the frequency of registration attempts among nonregistered teachers.

TABLE I.—*Negro Teachers in Sample*

County	Teachers in county	Number in sample	Number contacted	Completed interviews
W.....	225	63	48	46
X.....	169	41	29	26
Y.....	74	54	47	40
Z.....	73	56	50	19

\* The small number of completed interviews in County Z was due to the fact that most teachers in this county refused to be interviewed. The significance of this is discussed on p. 37, *infra*.

TABLE II.—*Registration of Negro teachers in four Mississippi counties*

[In percent]

	W	X	Y	Z
Registered.....	73.9	42.3	2.5	0
Not registered.....	26.1	57.7	97.5	100
Total.....	100	100	100	100
(Number).....	(46)	(26)	(40)	(19)

TABLE III.—*Frequency of attempted registration among nonregistered Negro teachers*

[In percent]

	W	X	Y	Z
Attempted.....	8.3	40.0	2.6	0
Not attempted.....	91.7	60.0	97.4	100
Total.....	100	100	100	100
(Number).....	(12)	(15)	(39)	(19)

Thus, in County Z not a single Negro teacher was registered or had attempted to register.

Lack of interest in voting is the usual cause of low registration. The survey was designed to determine the extent to which this was so in Mississippi. The interviewers questioned respondents as to their interest in politics, their desire to vote, and their feelings about the significance of voting. The responses to these questions were correlated with registration or attempted registration to determine whether those expressing greater

political interest were registering in greater numbers. The report shows that, although there were differences in motivation to participate in politics, a significant proportion of teachers in all four counties displayed a high degree of interest.

When questioned about their interest in the 1964 Presidential Election, almost all respondents in Counties W, X, and Y, and about two-thirds of of the respondents in County Z (none of whom were registered) expressed strong interest. In correlating the expression of interest in the election with the respondent's registration, the pattern varied significantly. In County W, over 75 percent of those expressing strong interest were registered; in County X less than half with strong interest were registered; in County Y only one of the 37 with strong interest was registered; and in County Z none of the eleven with strong interest was registered.

A similar pattern appeared in other tests of political interest, such as the respondent's desire to vote. In fact, it was found that in some areas of inquiry in County Y (2.5 percent teacher registration), expressions of political interest were higher than in any of the other counties. Even in County Z (no teachers registered), a majority expressed significant political interest.

Professor Prothro's report states that teachers in all four counties overwhelmingly believed that the presence of a Negro electorate or a larger Negro electorate would make a difference in the Negro way of life in the county.

TABLE IV.—*Do you feel it would make a difference if Negroes (more Negroes) registered and voted in this county?*

[In percent]

	W	X	Y	Z
Yes.....	88.6	92.0	87.5	50.0
No.....	6.8	8.0	7.5	38.9
Don't know.....	4.6	.....	5.0	11.1
Total.....	100	100	100	100
(Number).....	(44)	(25)	(40)	(18)

Some felt that the presence of a Negro electorate would result in greater political freedom; others believed it would lead to fairer law enforcement; and some looked to a greater responsiveness by officials to the needs of the Negro community. One teacher in County Z merely stated, "Maybe we would feel better about things like just talking with you."

The disparity between expressions of political interest and registration or attempted registration, particularly in Counties Y and Z, indicated that interest was not the controlling factor in registration. Registration

generally increases with the education of the class under consideration. Studies in other Southern States had shown that 80 percent of Negroes with college degrees were registered to vote. The lack of registration among the teachers interviewed, all of whom had college degrees, was therefore striking.

Professor Prothro reached the conclusion that fear, principally fear of losing a job, was the major factor preventing Negro teachers from attempting to register to vote.

This fear was strongest among Negro teachers in County Z. Professor Prothro found that 79 percent of those interviewed in County Z, where none were registered or had attempted to register, expressed fear in the course of the interview. Most of these teachers stated that they would lose their jobs if they attempted to register. The fear in County Z was so pronounced that a general feeling persisted among Negro teachers that it was not safe to discuss civil rights among themselves. One teacher, when asked if she discussed politics with other teachers, stated, "I don't dare talk to my coworkers." Another teacher, when asked if he had attended any meetings where voter registration was discussed, said that "with the situation in this county you know better than to do so." Another, when asked if she ever persuaded Negroes to register, asserted: "I am a teacher. If I want my job I know better than to do that." Fear of discussion was expressed by another teacher who stated that voter registration was not discussed because the "walls have ears."

One teacher related an incident which gave credence to the fear of open discussion:

We discussed it [Negro voter registration] in a very general manner at a meeting, and before we could get settled at home the phone was ringing and there was some explaining to do. I guess I better not go into it anymore. You know I would rather you did not write what I am saying—we have to be careful \* \* \*.

Another teacher, asked if it would make a difference in their way of life in the county if more Negroes could register and vote, stated, "Well, one thing—they could speak up \* \* \* Talk up instead of being afraid \* \* \*. Now listen, please understand, I don't want you to even say I talk with you—we must be careful."

A majority of the teachers approached in County Z (31 out of 50) refused to grant an interview. Most of those refusing offered no explanation, but about a third offered the comment that granting an interview could jeopardize their jobs. Those who commented explained that their school principal had instructed them not to discuss civil rights with anyone and that this order had emanated from the county school superintendent. The issuance of the order and the high degree of compliance by teachers is itself a significant indication of the lack of political freedom in this county.

Fear was also found among Negro teachers in County Y, where 75 percent of those interviewed stated they were afraid when asked why they had

not attempted to register. Most of these teachers expressed fear they would lose their jobs. For example, one teacher said, "We have our reasons [for not trying to register] \* \* \* We want to keep our jobs. We have to work. All I know how to do is teach." Another woman, who was extremely apprehensive about the interview, was asked if she ever encouraged Negroes to register. She described her attitude:

I've always felt it was important, but at the same time I felt it is right for someone else to do these things first \* \* \*. People who can't actually be hurt financially or lose their jobs because of this sort of thing. I think in our position as school teachers that would be the first thing to happen.

Some teachers stated they were afraid of being subjected to physical violence as well as the possibility of job loss. One teacher said, "I have heard talk \* \* \* you might be ganged up on \* \* \* if they catch you by yourself they will jump you \* \* \* beat you up." Another, when asked if he believed he would ever vote in the county, gave the following answer:

Not unless we get some help \* \* \* outside pressure \* \* \* protection \* \* \*. If I decide to vote I go down there and they might bomb my house. If I registered they might do anything. I don't trust the law officials. I trust them about as much as I trust a mad dog.

Others mentioned specific incidents of violence or the publicity of a registration attempt as reasons for failure to attempt to register.

The situation in County Y seems to be changing. One teacher successfully registered in January 1965 without any difficulty.<sup>27</sup> Several of those interviewed reported that they had heard of a recent change in policy which would permit them to register. Two teachers said that such a change was announced by a Negro school principal at a recent teachers' meeting. Professor Prothro concluded that despite some improvement there was still extreme uncertainty among Negro teachers in County Y about voter registration.

In County X 42 percent of the teachers were registered. Some of the registered teachers stated they had experienced no difficulty after registering, and 40 percent (6 of 15) of the unregistered teachers had made the attempt.<sup>28</sup> Fear did not play as prominent a role in this county as it did in Counties Y and Z. Of the nine unregistered teachers who had made no effort to register, only one felt that fear played a part in his failure to try. The others stated that lack of interest was their reason for not registering. In the course of the questioning, however, a majority of all those interviewed expressed some fear. These expressions included fear of job loss and violence, although fear of job loss was not considered as likely as in Counties Y and Z.

<sup>27</sup> The Commission has been advised by resident Negroes in County Y that since the survey was conducted several teachers have successfully registered.

<sup>28</sup> A major complaint among those interviewed was directed at the registration test, which many teachers believed was not fairly administered. The fact that 40 percent of the unregistered teachers, all of whom were college graduates, failed the test (one teacher did not meet the residency requirement) indicates that the registration test is a major obstacle to voter registration in County X.

Professor Prothro found a "startling contrast in County W from the other counties investigated." About 74 percent of those interviewed were registered; there was a virtual absence of fear and few complaints were directed at the administration of the registration test. Lack of interest was a major factor preventing teachers from registering to vote. The teachers were proud of the political freedom in County W and many expressed an awareness that County W differed significantly from other parts of Mississippi.

The low income and economic dependence of most Negroes in Mississippi has given rise to widespread fears that registration or voting will result in reprisals. These fears are intensified because Negroes in rural counties who attempt to register cannot hope to remain anonymous. Any doubt that applicants will be identified has been removed by the legal requirement that their names be published in local newspapers and by practices such as the photographing of Negro applicants by public officials. In this climate a single incident of reprisal may be sufficient to deter many potential registrants. Thus, many Negroes believe with Aaron Henry that:

For many people an attempt to register would result in their not having any money to buy milk for the baby, no money to buy food for the family, and no money to pay the rent for the roof over their heads.<sup>29</sup>

Fears of economic reprisal are not confined to Negroes with the lowest incomes. In some areas of Mississippi Negro teachers want to register and vote but fail to do so because they fear they will lose their jobs. The intimidation of Negro teachers is particularly significant because in the absence of any large group of Negro lawyers, doctors, accountants, or technicians in Mississippi, teachers account for a disproportionately large segment of the group which most often provides community leadership. Moreover, teachers have a professional obligation to communicate to young people an interest in political participation and a sense of civic duty. When teachers themselves fail to participate, they set an example for those they teach.

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<sup>29</sup> T. 156.

## CHAPTER V. EDUCATIONAL DEPRIVATION AND VOTING

Under Mississippi law an applicant for registration is required to read, copy, and interpret a section of the Mississippi constitution. He is also obliged to write a statement of the duties and obligations of citizenship under a constitutional form of government.<sup>1</sup> These requirements, even when administered fairly and without discrimination, make significant educational attainment a prerequisite to voting in Mississippi.

Although education, as such, was not a subject of Commission investigation, witnesses at the hearing asserted that inadequacies in public education provided by the State of Mississippi to Negro school children made any test of literacy or comprehension unfair as a prerequisite to voting.<sup>2</sup> This view is supported by the history of segregated and inferior Negro public schools in Mississippi—a school system which has produced a sixth grade median education level for Negroes compared with an eleventh grade median education level for whites.<sup>3</sup>

Prior to the Civil War it was a crime in Mississippi, punishable by flogging, for a slave to gather with four or more Negroes, whether slaves or freedmen, "at any school for teaching them reading and writing."<sup>4</sup> By 1869, with the elimination of slavery, public education was extended to all citizens of the State without reference to race.<sup>5</sup> The constitution of 1890 imposed segregation by providing that "Separate schools shall be maintained for children of the white and colored races." This provision has never been repealed.<sup>6</sup>

In 1952 the legislature established a Recess Study Committee to prepare recommendations for action "to maintain segregation of the races in the public schools \* \* \*, to expand and equalize educational opportuni-

<sup>1</sup> Miss. Const. art. 12, § 244.

<sup>2</sup> T. 158, 201.

<sup>3</sup> *Hearings in Jackson, Miss. before the U.S. Commission on Civil Rights*, February 16-20, 1965, Vol. II (in preparation) *Economic Status of Negroes in Mississippi*.

<sup>4</sup> "All meetings or assemblies of slaves, or free negroes or mulattoes mixing and associating with such slaves, above the number of five \* \* \* at any school for teaching them reading or writing, either in the day time or night, under whatsoever pretext, shall be deemed an unlawful assembly \* \* \* and all slaves offending herein shall be tried in the manner hereinafter provided for the trial of slaves, and on conviction, shall be punished by not more than thirty-nine lashes on the bare back." Miss. Code ch. 33, § 10, art. 51 (1857).

<sup>5</sup> "Sec. 1. As the stability of a republican form of government depends mainly upon the intelligence and virtue of the people, it shall be the duty of the legislature to encourage by all suitable means, the promotion of intellectual, scientific, moral and agricultural improvement, by establishing a uniform system of free public schools, by taxation or otherwise, for all children between the ages of (5) five and (21) twenty-one years, and shall, as soon as practicable establish schools of higher grade."

<sup>6</sup> "Sec. 10. The legislature shall, from time to time, as may be necessary, provide for the levy and collection of such other taxes as may be required to properly support the system of free schools herein adopted. And all school funds shall be divided *pro-rata* among the children of school ages." Miss. Const. art. VIII (1869).

"All the children of this state, between the ages of five and twenty-one years, shall have, in all respects, equal advantages in the public schools." Miss. Code ch. 39, art. 1, § 1993 (1871).

<sup>6</sup> Miss. Const. art. 8, § 207.

ties \* \* \*, [and] to provide equal school facilities for the races \* \* \*."<sup>7</sup> A new code of school laws was enacted in 1953 pursuant to the recommendations of this Committee.<sup>8</sup>

In 1954, following the decision of the Supreme Court in the *School Segregation Cases*,<sup>9</sup> the Mississippi legislature passed a series of measures designed to prevent desegregation. It enacted a school assignment law giving the board of trustees of each school district broad discretion in the assignment of pupils.<sup>10</sup> The legislature also amended the constitution, giving itself power to abolish the public schools system.<sup>11</sup> In 1955 the legislature made it a misdemeanor for a white person to attend school with a Negro.<sup>12</sup> In 1956 it abolished the compulsory school attendance law.<sup>13</sup> In 1958 it gave the Governor authority to close public schools or schools of higher learning when, "in his discretion, he determines such closure will promote or preserve the public peace, order, or tranquillity \* \* \*."<sup>14</sup> Finally, in 1960 the power to close schools was extended to the board of trustees of any school district.<sup>15</sup> Schools once closed could not be reopened without further order of the trustees, or until three-fifths of the qualified electors of the school district petitioned the board for their reopening.<sup>16</sup>

Throughout this period public education in Mississippi remained completely segregated. The first challenge arose in 1962 when James Meredith was enrolled at the University of Mississippi under court order. The President was required to use United States marshals and Federal troops to enforce the order and to quell subsequent disturbances.<sup>17</sup> Negro students were not admitted to previously all-white elementary and secondary schools until September 1964, when a Federal court ordered desegregation and accepted a grade-a-year plan for the cities of Jackson and Biloxi, and for Leake County.<sup>18</sup>

Within two weeks of the issuance of this order the Mississippi legislature, meeting in extraordinary session, enacted a series of laws relating to the assignment of pupils and to tuition grants. One statute prohibits assign-

<sup>7</sup> Miss. Laws 1952, ch. 453.

<sup>8</sup> Miss. Code Ann. tit. 24, §§ 6216-01 to 6672 (Supp. 1962). A plan for "equalization of facilities between the races" was made a prerequisite to any reorganization or reconstitution of school districts. Miss. Code Ann. tit. 24, § 6328-03 (Supp. 1962).

<sup>9</sup> *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

<sup>10</sup> Miss. Code Ann. tit. 24, §§ 6334-01-02 (Supp. 1962).

<sup>11</sup> Miss. Const. art 8, § 213-B.

<sup>12</sup> Miss. Code Ann. tit. 24, § 6220.5 (Supp. 1962). The penalty provided is a fine up to \$25 and/or imprisonment up to six months.

<sup>13</sup> Miss. Laws 1956, ch. 288.

<sup>14</sup> Miss. Code Ann. tit. 24, § 6232-21 (Supp. 1962).

<sup>15</sup> Miss. Code Ann. tit. 24, § 6232-41 (Supp. 1962).

<sup>16</sup> Miss. Code Ann. tit. 24, § 6232-43 (Supp. 1962).

<sup>17</sup> For a detailed presentation of the events culminating in Meredith's admission to the University and its immediate aftermath, see Barrett, *Integration at Ole Miss* (1965) and Silver, *Mississippi: The Closed Society* (1964). For later litigation involving desegregation of the University of Mississippi, see *Greene v. Fair*, 314 F. 2d 200 (5th Cir. 1963); *McDowell v. Tubb*, 3 Race Rel. L. Rep. 459 (S.D. Miss. 1963). See also, *United States v. Barnett*, 376 U.S. 681 (1964).

<sup>18</sup> *Evers v. Jackson Municipal School Dist.*, 232 F. Supp. 241 (S.D. Miss. 1964), enforcing, 328 F. 2d 408 (5th Cir. 1964). The plan accepted by Judge Mize in this case and in *Mason v. Biloxi Municipal Separate School Dist.*, and *Hudson v. Leake County School Bd.*, appears in 9 Race Rel. L. Rep. 1251 (1964). A preliminary injunction was also granted in Coahoma County; see *Henry v. Clarksdale Municipal Separate School Dist.*, 9 Race Rel. L. Rep. 1253 (N.D. Miss. 1964). However, by rezoning, de-annexation, or condemnation, all Negro homes were subsequently excluded from the zones of schools attended by white pupils, so that no Negroes have yet attended any previously white school under this order. See 1964 Staff Report of the U.S. Commission on Civil Rights, *Public Education* 137-38.

ment of a pupil to any class in which his presence, because of "age differential, mental development, achievement level, or personal habits, would serve to adversely affect, hinder, or retard the academic development of the other pupils in the class."<sup>19</sup> Another requires any pupil wishing to change schools to take a test to determine the grade in which he should be placed.<sup>20</sup> A third provides for a system of State and local tuition grants of up to \$185 per year for each student attending private schools other than parochial or sectarian schools.<sup>21</sup>

In the fall of 1964, 56 Negroes were admitted to 13 previously all-white elementary schools in Mississippi.<sup>22</sup> With these exceptions, public education on the elementary and secondary levels remains completely segregated.

Mississippi Negroes now of voting age were educated in schools which were not only segregated, but also greatly inferior to white schools. In the 1930's Mississippi spent between six and seven dollars per year in educating each Negro child; more than five times as much was spent in educating each white child.<sup>23</sup> Although in 1930 there were more Negro than white children of school age,<sup>24</sup> the State provided only 46 public high schools for Negroes out of a State total of nearly 700.<sup>25</sup> White high school enrollment was about 50,000 and Negro enrollment about 5,000.<sup>26</sup> In 1931 many Negro elementary and secondary schools had only a single teacher. White one-teacher schools were being rapidly eliminated as a result of a program of consolidation begun twenty years before.<sup>27</sup>

At the end of the 1930's the State still employed 3,000 Negro teachers who had not completed high school; only 11 white teachers were in this category. There were 600 Negro teachers with college degrees, but more than 6,000 white teachers with such degrees.<sup>28</sup> In 1937 the Superintendent of Education reported that the "most urgent need" was for trained Negro teachers and that the facilities for training such teachers were "wholly inadequate."<sup>29</sup>

In 1940 the average salary of Negro teachers was \$233 a year, less than one-third the average salary of white teachers.<sup>30</sup> The Superintendent of Education reported that the salary of Negro teachers was insufficient to "maintain any sort of decent standard of living."<sup>31</sup>

<sup>19</sup> Race Rel. L. Rep. 1498 (1964).

<sup>20</sup> Race Rel. L. Rep. 1498 (1964).

<sup>21</sup> Race Rel. L. Rep. 1500 (1964).

<sup>22</sup> 1964 Staff Report of the U.S. Commission on Civil Rights, *Public Education*, 137-39.

<sup>23</sup> *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1929-1930 and 1930-1931*, 49, 103 (computed: total instructional cost/average daily attendance). [Hereinafter, this series of reports will be cited as *Biennial Report*.] *Biennial Report 1939-41*, at 59, 75.

<sup>24</sup> In the school year 1929-30 there were 493,987 Negro children of school age and 379,678 whites. *Biennial Report 1929-31*, at 99.

<sup>25</sup> *Twenty Years of Progress 1910-30 and A Biennial Survey for the Scholastic Years 1929-1930 and 1930-1931 of Public Education in Mississippi*, 17; State of Miss. Dep't. of Educ., *A Report of the Committee of Investigation of the Teacher Training Facilities for Negroes in Mississippi*, Bull. No. 61, at 26 (1930).

<sup>26</sup> *Twenty Years of Progress*, op. cit. supra note 25, at 124, 129.

<sup>27</sup> *Id.* at 51, 53. See *Biennial Report 1909-11*, at 25-28.

<sup>28</sup> *Biennial Report 1939-41*, at 17, 39.

<sup>29</sup> *Biennial Report 1935-37*, at 15.

<sup>30</sup> Miss. State Dep't. of Educ., *Statistical Data—1963-64*, at 45.

<sup>31</sup> *Biennial Report 1937-39*, at 16.



Nor were there enough Negro teachers. According to the Superintendent's Report:

The [Negro] teaching force, numbering 5,863 teachers, has an average of 50 enrolled pupils each. This average situation is rarely ever found, for teachers in the lower grades frequently have in their charge from seventy-five to one hundred and fifty pupils. \* \* \* By the time sixth or seventh grades are reached, pupils begin to leave school in large numbers.<sup>32</sup>

School facilities were equally inadequate. In 1935 the Report pointed to a "dire need" for school furniture and basic teaching materials:

In hundreds of rural [Negro] schools there are just four blank unpainted walls, a few old rickety benches, an old stove propped up on brickbats, and two or three boards nailed together and painted black for a blackboard. In many cases, this constitutes the sum total of the furniture and teaching equipment.

\* \* \* \* \*

The Negroes themselves, in some cases, are building and repairing their school houses out of their own meager savings and with their own labor.<sup>33</sup>

Charles Evers, Field Director for the State NAACP, described his childhood schooling in Mississippi for the Commission:

When Medgar and I were boys walking to school we used to have to walk on the dirty rock road and the white kids would have to ride in the shiny school busses. \* \* \* And, we would get down to these schools where they have one or two shutters and they would have to huddle around a potbelly stove—we didn't even have a blackboard to write on. Most of our school teachers didn't finish 8th grade. \* \* \* They would have us bring pennies to go buy black paint and a brush and paint on the wall a blackboard for us to write on. Then the white Superintendent of Education would send us all the broken-off chalk that the whites had used down to the finger, and we would have to use that for our crayon.<sup>34</sup>

Throughout the 1940's facilities and equipment in Negro schools remained rudimentary. In 1947 the Superintendent of Education reported that nearly half the Negro public schools in Mississippi were housed in churches, tenant houses, or any other type of available structure and that "in such schools the equipment is nil."<sup>35</sup>

By 1950 the salary and training of Negro teachers had improved, but still remained far inferior to those of white teachers. Negro teachers were receiving an average salary of \$711, while white teachers were receiving \$1,806.<sup>36</sup> The State still employed over 700 Negro teachers who had not completed high school, although every white teacher was at least a high school graduate.<sup>37</sup> The number of Negro teachers with college degrees had risen to about 1,200, but more than 6,000 white teachers had such degrees.<sup>38</sup> Moreover, expenditure for the education of a Negro child was still less than one-third the expenditure for the education of a white child.<sup>39</sup>

<sup>32</sup> *Biennial Report 1933-35*, at 41. On the basis of average daily attendance the pupil-teacher ratio for Negro schools was 56-1, and 24-1 for white schools. *Id.* at 78, 82 (computed: number of students/number of teachers).

<sup>33</sup> *Biennial Report 1933-35*, at 41.

<sup>34</sup> *T.* 170.

<sup>35</sup> *Biennial Report 1945-47*, at 41.

<sup>36</sup> Miss. State Dep't. of Educ., *Statistical Data—1963-64*, at 45.

<sup>37</sup> *Biennial Report 1949-51*, at 167.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Biennial Report 1949-51*, at 114, 133 [computed: total instructional cost/average daily attendance.]

After the decision in the *School Segregation Cases*<sup>40</sup> struck down public school segregation, an effort was made to equalize, but not to desegregate, the two school systems. The School Superintendent's report urged communities "to meet the responsibility of truly equalizing facilities."<sup>41</sup> The report also noted "the fact that public schools for Negroes have been poor in the past also has a direct bearing on the quality of instruction being done \* \* \*."<sup>42</sup> A program to consolidate the rural Negro schools was undertaken and an effort made to raise the salaries of Negro teachers.

The inequalities inherent in Mississippi's segregated public schools are still fortified by inequalities in expenditure, teaching staff, and school facilities. One indication of the quality of education provided Negro children is the amount spent for instruction. In the 1960-1961 school year, the average total expenditure for each white child was \$173.42, while an average of only \$117.10 was spent for each Negro child.<sup>43</sup> The State expenditure per pupil is the same for white and Negro pupils; the differential arises from unequal payments by local school districts which supplement the State statutory payment.<sup>44</sup> The disparity varies from county to county. For example, in 1961-1962, the Jefferson County school district, which has a 68 percent Negro population, expended \$96.29 for each white child and \$2.60 for each Negro child above the State contribution.<sup>45</sup> Similar disparities appear in Delta school districts with heavy Negro populations, as shown in Table I.

TABLE I.—Local expenditures per pupil, 1961-62<sup>46</sup>

County district	White	Negro
Humphreys.....	\$116. 62	\$15. 35
Coahoma.....	139. 33	12. 74
Sunflower.....	127. 36	11. 49
North Panola Consolidated.....	104. 28	1. 76
LeFlore.....	175. 38	9. 52
Yazoo.....	245. 55	2. 92
West Tallahatchie.....	141. 95	13. 47

In the number and training of his teachers, a Negro pupil still does not fare as well as a white pupil. In the 1963-1964 school year there were more than 1,900 white teachers with graduate degrees, but less than 500 Negro teachers with such degrees.<sup>47</sup> Only 17 of the Negro teachers received their graduate degrees from institutions in Mississippi.<sup>48</sup> Although

<sup>40</sup> *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

<sup>41</sup> *Biennial Report 1955-57*, at 40.

<sup>42</sup> *Id.* at 41.

<sup>43</sup> *Biennial Report 1959-61*, at 33, 77 [computed: total instructional cost/average daily attendance].

<sup>44</sup> Miss. Code Ann. tit. 24, §§ 6248-01-02 (Supp. 1962). Local school districts have authority to augment the statewide pay scale out of local funds. Miss. Code Ann. tit. 24, § 6248-02(a)(2) (Supp. 1962).

<sup>45</sup> Southern School News, Feb. 1962, p. 6.

<sup>46</sup> *Ibid.*

<sup>47</sup> Miss. State Dep't. of Educ., *Statistical Data—1963-64*, at 40.

<sup>48</sup> T. 216. In 1964 there were three Negro senior colleges and three Negro junior colleges in Mississippi with a total enrollment of 6,123. In the same year there were five white senior colleges and fourteen white junior colleges with a total enrollment of 35,456. Miss. State Dep't. of Educ., *Statistical Data—1963-64*, at 87, 89, 91.

differences in salary are partially attributable to the higher degree of training received by white teachers, Table II shows that in the school year 1963-1964 Negro teachers with the same educational qualifications as white teachers received lower salaries. The disparities are the result of the unequal payment of supplemental salaries by local school districts.

TABLE II.—Average salaries of classroom teachers according to training, 1963-64 <sup>40</sup>

Certificate	White	Negro
AA (master's degree).....	\$4,652.76	\$4,391.69
A (bachelor's degree).....	3,938.11	3,596.00
B (3 year's college).....	2,830.24	2,224.73
C (2 year's college).....	3,028.15	1,914.59
D (1 year's college).....	2,609.81	1,536.00
E (no college).....	2,551.52	1,199.00

The Commission gained further insight into the inadequacies of public education for Negroes from the testimony of Father Luke Mikschl, a priest in Canton, who described a school operated in his community by the Holy Child Jesus Mission. There is a drawback for Negro parents who wish to send their children to the mission school. The tuition charge is \$2 to \$5 a month which, according to Father Mikschl, most parents find a considerable sum. Moreover, the school is Catholic while most of the Negroes in Canton are Protestant. Despite this, the school has an enrollment of 270 Negro children.<sup>50</sup> Father Mikschl explained the interest in the school as follows:

Well, simply because, as our people say, we take pains with their children. We have an excellent group of sisters who love the work very much and have been there many years. One of them, in fact, has been with us 16 years. The Negro children are sent to our school, we feel, because education is first in the parents' minds and they want their children to have the best education they did not have or were deprived of because of the times in which they lived.<sup>51</sup>

At the Mission school, attendance is good, most pupils graduate, and more than half of the graduates go on to college.<sup>52</sup>

The State of Mississippi has established and maintained a system of public schools to provide for the education of its citizens. In so doing it has segregated Negro children in inferior schools and thus deprived them of the opportunity to receive either equal or adequate education. The quality of education afforded Negroes has been so poor that any test of educational skills as a prerequisite to voting would necessarily discriminate

<sup>40</sup> *Ibid.*

<sup>50</sup> *Hearings in Jackson, Miss., before the U.S. Commission on Civil Rights, Feb. 16-20, 1965, Vol. II (in preparation).*

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.* In 1961-62, the Canton Separate School District spent \$35.79 for each white pupil and \$17 for each Negro pupil. The Madison County District, in which Canton is located, spent \$171.24 for each white pupil and \$4.35 for each Negro pupil. *Southern School News, Feb. 1962, p. 6.* According to Father Mikschl, there is a high rate of absenteeism in the Negro public schools in Canton which he believes is attributable to the repeal of the compulsory school attendance law.

against them. Because of these historic inequalities the Federal Government has sought to abolish not only the constitutional interpretation test but also any other interpretation or understanding test which "bears a direct relationship to the quality of education afforded Negro applicants."<sup>63</sup> As long as Mississippi continues to segregate Negro children and fails to provide them with an adequate education any procedure used as a test for registration is subject to this challenge.

<sup>63</sup> *United States v. Mississippi*, 380 U.S. 128, 135 (1965).

## CHAPTER VI. PRIVATE AND PUBLIC EFFORTS TO INCREASE NEGRO REGISTRATION

In recent years the Department of Justice has initiated a substantial number of lawsuits in Mississippi to secure judicial enforcement of the right to vote. Since 1963 civil rights organizations have accelerated their efforts to encourage Negro citizens to attempt to register and vote. Federal enforcement proceedings and private registration drives have given important support to Negro citizens in Mississippi and encouraged many to attempt to register.<sup>1</sup> However, these efforts have failed to produce any significant increase in Negro registration and voting.

### EFFORTS BY PRIVATE ORGANIZATIONS

During 1964 voter registration work in Mississippi was carried on under the auspices of an organization known as the Council of Federated Organizations (COFO). This organization coordinated the efforts of civil rights groups such as the Congress of Racial Equality (CORE), the National Association for the Advancement of Colored People (NAACP), the Student Nonviolent Coordinating Committee (SNCC), and the Southern Christian Leadership Conference (SCLC).<sup>2</sup>

The leadership of the coordinated civil rights effort was drawn from Negro organizations active in the State.<sup>3</sup> The oldest of these is the NAACP which has been active in Mississippi for 47 years and currently has 22 chapters throughout the State.<sup>4</sup> While most of the organizations employ field workers coming from outside the State, the NAACP has relied primarily on local Negroes.<sup>5</sup>

During 1964, registration drives were conducted in 20 counties and some 25 communities—primarily in the Delta, the Gulf Coast area, and the major cities.<sup>6</sup>

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<sup>1</sup> It is estimated that as many as 17,000 Negroes applied for registration in 1964, a greater number than at any time in the recent past. T. 157.

<sup>2</sup> T. 155. COFO was founded in 1962 at a meeting in Clarksdale, Mississippi. T. 182-83.

<sup>3</sup> T. 182-83.

<sup>4</sup> T. 153.

<sup>5</sup> T. 163-64. As a result, there are no NAACP registration efforts in those counties where local Negroes are too fearful to join or work for the organization.

<sup>6</sup> Registration drives were reportedly conducted in the following: *Counties*—Adams, Amite, Chickasaw, Claiborne, Clarke, Coahoma, Forrest, Franklin, Holmes, Issaquena, Leake, Marion, Marshall, Neshoba, Newton, Panola, Sunflower, Tallahatchie, Walthall, and Washington. *Cities and towns in other counties*—Aberdeen, Anguilla, Amory, Belzoni, Biloxi, Booneville, Canton, Cleveland, Columbus, Greenwood, Gulfport, Jackson, Laurel, McComb, Meridian, Moss Point, Pascagoula, Prentiss, Ripley, Rolling Fork, Vicksburg, and West Point. T. 155.

A registration leader described these activities:

Voter registration clinics are conducted by holding citizenship classes \* \* \* to help familiarize the prospective registrant with all the sections of the constitution. Door-to-door canvasses are made and people are encouraged to go down and try to vote after coming to the citizenship schools.

\* \* \* \* \*

In many areas people are afraid to go down to the courthouse alone, both from the standpoint of fear of physical violence and also for the fear of being identified as one alone trying to register. To offset both of these difficulties we encourage as many people as we can to go down to the courthouse and try to register. We feel strongly there is some element of safety in numbers.<sup>7</sup>

Negro registration activity has encountered great official and private resistance. At the hearing, Wiley Branton, Director of the Voter Education Project of the Southern Regional Council,<sup>8</sup> testified that in 1962 on the night COFO was founded in Clarksdale participants in the meeting were arrested as they drove away and charged with loitering.<sup>9</sup> According to Mr. Branton, this was the beginning of a pattern of harassment:

Now, I have gone at great length to describe these incidents because from there on out it appeared that we were subjected to this kind of harassment and intimidation every single week \* \* \*.

These problems were not confined to Clarksdale and Indianola. They happened at one time all up and down the Delta. Almost nobody could get out in an automobile and drive anywhere without fear of being arrested for some trumped-up traffic violation and in practically every instance the simple thing to do was to go ahead and pay the fine.<sup>10</sup>

Since that time the Commission has received numerous complaints and reports of official harassment and violence against civil rights workers. A statement submitted to the Commission at the hearing listed some 30 occasions of alleged official interference with voter registration activity in the preceding year, involving arrests of hundreds of persons and acts of unwarranted violence by law enforcement officials. This statement also listed more than 20 incidents of major interference by private individuals, involving killings, beatings, bombings, arson, and threats of violence.<sup>11</sup>

Official opposition to civil rights activities has been further expressed by the recent enactment of laws which, among other things, limit picketing of public buildings, and the distribution of leaflets calling for economic boycott, and authorize municipalities to restrain the movement of persons.<sup>12</sup> The present Governor of Mississippi refuses to meet with local Negro leaders of civil rights organizations to discuss the problems of the Negro community.<sup>13</sup> The State administration has persisted in its refusal to

<sup>7</sup> T. 155-56.

<sup>8</sup> The Southern Regional Council, organized in 1944, consists of a board of 100 prominent Southerners of both races. Its chief functions are 1) consultative services to private and official agencies; 2) a research program and publication of its findings; 3) a clearing house and coordinator for other agencies concerned with Southern problems. See, *Annual Report of the Executive Director of the Southern Regional Council* (1965); Dunbar, *The Southern Regional Council*, 357 Annals 108 (1965).

<sup>9</sup> T. 183.

<sup>10</sup> T. 184-85.

<sup>11</sup> T. 264-68. The Commission investigated a number of such incidents and the result of this investigation will be presented in a forthcoming report.

<sup>12</sup> For these and other enactments, see 9 Race Rel. L. Rep. 985-88, 992-94, 1494-97 (1964).

<sup>13</sup> T. 268-71.

approve the application of the NAACP to do business as a foreign corporation in Mississippi, on the ground that domestication would not be in the best interests of the State.<sup>14</sup> And many public officials and white Mississippians share the view of Mayor Allen Thompson of Jackson that the civil rights workers were "troublemakers" or misguided people "with no ability to bring any good to the community."<sup>15</sup>

Negro witnesses questioned by the Commission took a different view. They uniformly approved of the civil rights workers and believed that registration efforts in counties with low Negro registration depended upon their encouragement and support. A witness from Issaquena County reported that the Negroes began applying for registration when civil rights workers came to the county, held a "mass meeting," and asked, "[W]ho would volunteer to go over to the courthouse and try to register to vote?"<sup>16</sup> A witness from Carroll County testified that Negroes would not try to register unless "COFO workers or some white man [was] there to go with them."<sup>17</sup> He contrasted the relative success of civil rights workers with his own inability to persuade other Negroes to make the attempt:

I believe this: If we can get more workers in there, white people, they will go. Now, they just came here in the county the last about three weeks. I have tried to get [Negroes] to go and couldn't. They come there and they were able to get 10 or 12 to go to try, but they had to go with them.<sup>18</sup>

In Tate County, where a local voter registration effort was joined by civil rights workers from outside the county, the local leader testified that the COFO workers had done a good job and had been helpful in his program.<sup>19</sup> In Tallahatchie County, where the Department of Justice had obtained a court decree eliminating the constitutional interpretation test, a witness testified that civil rights workers had been "helpful, very helpful, because [of] the fact the people in the part of the county where I am, they never would have known about that they could register to vote if it hadn't been for the COFO people."<sup>20</sup> Another Negro, Mrs. Birdie Kegler, who had worked actively in the registration drive agreed that civil rights workers had been helpful "because they get around in general through the communities and from house to house talking with the people."

Commissioner HENBURGH. Is there any other agency in Tallahatchie County that encourages American citizens to vote and tells them how?

Mrs. KEGLER. No others that I know of.<sup>21</sup>

For the most part these organizational efforts did not succeed in registering large numbers of Negroes. Besides the obvious barrier of the registration test, the voter registration workers contended with the fears of the

<sup>14</sup> See, *NAACP v. Thompson*, Civil No. 3432, S.D. Miss. June 7, 1963, *appeal docketed*, No. 21741, 5th Cir., June 20, 1964.

<sup>16</sup> T. 29.

<sup>17</sup> T. 97.

<sup>18</sup> T. 98.

<sup>19</sup> Testimony of Adell Davis, T. 115-16.

<sup>20</sup> T. 137.

<sup>21</sup> T. 146.

Negro community, harassment from white officials, and violence. As a result success in registering new voters was so slight that the Voter Education Project, which had financed much of the effort, withdrew all financial support from the Mississippi projects in 1963 because it decided money spent in other States would produce greater results.<sup>22</sup> A significant exception was made for Panola County where the Department of Justice had obtained a sweeping decree simplifying the literacy test. There, notable success was achieved with the registration of approximately 1,000 Negroes (approximately 15 percent of the Negro voting age population) as a result of work financed by the Project.<sup>23</sup>

The example of Panola County suggests that a successful registration drive depends upon both a vigorous local effort to encourage Negroes to register and a substantial simplification of the registration test.

## EFFORTS BY THE DEPARTMENT OF JUSTICE

### 1971(a) Cases

In July 1961 the Department of Justice filed its first voter discrimination suit in Mississippi seeking injunctive relief under 42 U.S.C. § 1971(a) to secure the right to vote. Since that time 25 additional actions have been filed under section 1971(a).<sup>24</sup>

In all but one of these cases the Government attacked improper administration of State laws by State officials. The laws themselves were not challenged. A more fundamental approach was used in August 1962 when the Department of Justice brought an action against the State of Mississippi, its Board of Election Commissioners, and six county registrars challenging as unconstitutional and in conflict with paramount Federal law most of Mississippi's voting laws.<sup>25</sup> In substance the complaint charged:

that the State of Mississippi and its officials for the past three quarters of a century have been writing and adopting constitutional provisions, statutes, rules, and regulations, and have been engaging in discriminatory practices, all designed to keep the number of white voters at the highest possible figure and the number of colored voters at the lowest. It is alleged that the common purpose running through the State's legal and administrative history during that time has been to adopt whatever expedient seemed necessary to establish white political supremacy in a completely segregated society.<sup>26</sup>

<sup>22</sup> T. 186-87.

<sup>23</sup> T. 186, 258.

<sup>24</sup> Department of Justice, *1964 Status Report*, i-iv. Four additional suits have been filed since the issuance of the *Report*.

<sup>25</sup> *United States v. Mississippi*, 380 U.S. 128 (1965). The statutes challenged are as follows: Miss. Code Ann. § 3209.6 (Supp. 1962) requiring that application forms provide that applicants demonstrate "good moral character" and that registrars observe this requirement; Miss. Code Ann. § 3213 (Supp. 1962) requiring applicants to fill in all blanks on the application form "properly and responsively without any assistance"; Miss. Code Ann. § 3212.5 (Supp. 1962) generally prohibiting registrars from telling an applicant why he was rejected "as to do so may constitute assistance to the applicant on another application"; Miss. Code Ann. § 3212.7 (Supp. 1962) requiring newspaper publication of applicants' names; Miss. Code Ann. §§ 3217-01 to -15 (Supp. 1962) providing for challenge by any voter of an applicant's qualifications to vote; Miss. Code Ann. § 3232 (Supp. 1962) eliminating designation of race in county poll books. Also challenged were §§ 241-A and 244 of the Mississippi constitution. Sec. 241-A added a new voting qualification of "good moral character" and § 244 requires an applicant for registration to read and copy any section of the Mississippi constitution, give a reasonable interpretation of that section to the county registrar and also demonstrate to the registrar an understanding of the duties and obligations of citizenship under a constitutional form of government.

<sup>26</sup> *United States v. Mississippi*, 380 U.S. 128, 143-44 (1965).



A three-judge District Court dismissed the complaint. On appeal, the Supreme Court reversed, sustained the complaint, and remanded the case for trial in the District Court. The relief sought by the Government is a decree wiping out the present constitutional interpretation test and permitting the registration of any Negro applicant "who meets the age and residence requirements, is able to read, is sane, and has not been convicted of a disqualifying crime."<sup>27</sup>

In the remaining cases against individual registrars progress was described by Attorney General Kennedy as "painfully slow and difficult."<sup>28</sup> Prior to 1964 the Department of Justice estimated that the average elapsed time from the filing of the complaint to the entry of judgment was 17.8 months. Appeals were required in most cases. The average time required to complete an appeal from an unsatisfactory judgment was about one year. At the time of the hearing, only three Mississippi 1971(a) cases had reached final judgment.<sup>29</sup>

The slow progress of this type of litigation led Congress in 1964 to strengthen the remedy. Title I of the Civil Rights Act of 1964 permits the Attorney General in certain cases to request a three-judge court with a direct appeal to the Supreme Court. In addition, the Act directs judges "to assign the case for hearing at the earliest practicable date . . . and to cause the case to be in every way expedited." Title I also simplifies proof of literacy by providing that any literacy test be administered in writing, a copy be made available to the applicant upon his request, and, in any proceeding where literacy is a relevant fact, persons completing the 6th grade be presumed to possess sufficient literacy, comprehension, and intelligence to vote in any Federal election.<sup>30</sup>

Between the enactment of Title I and the commencement of the hearing, the Department of Justice filed seven voting suits against Mississippi registrars. These cases have progressed more swiftly. On the average, pretrial proceedings were completed in less than a month; one case went to trial in four months and offers of consent judgments were made by the defendants in two other cases.<sup>31</sup>

While the 1964 amendments appear to have expedited these cases, it is clear that the delays and difficulties of this type of litigation make obtaining effective relief both time-consuming and expensive. A striking example is *United States v. Lynd*, which was begun in August 1960 when the Department of Justice made a demand under the Civil Rights Act of 1960 for the inspection of registration and voting records in Forrest County, Mississippi. The registrar refused to comply, thus beginning a protracted, complex, and

<sup>27</sup> Statement of Burke Marshall, T. 257-58.

<sup>28</sup> *Hearings on S. 1731, 1750 Before the Senate Committee on The Judiciary*, 88th Cong., 1st Sess. 102 (1963) (hereinafter cited as *1963 Hearings*). For similar statements see *1963 Hearings*: 148-49, 1379, 2665, 2671, 2709-10.

<sup>29</sup> Statement of Burke Marshall, T. 258-60; Department of Justice, *1964 Status Report*, pt. I.

<sup>30</sup> 42 U.S.C.A. § 1971(a)(2)(C), §§ 1971(c), (h) (1964). Title I also prohibits officials from applying different standards, practices or procedures to new applicants, and prohibits officials from denying registration by reason of immaterial errors in executing application forms. 42 U.S.C.A. §§ 1971(a)(2)(A), (B) (1964).

<sup>31</sup> Statement of Burke Marshall, T. 260.

costly litigation which, after almost five years, is still pending. Effective relief in Forrest County has yet to be obtained.

The history of this litigation reveals that the failure of the district court judge to rule upon Government applications, the need for repeated appeals, and the recalcitrance of the registrar have frustrated effective relief.<sup>32</sup> At the outset the judge refused for six months to rule upon the Government's application for an order requiring the registrar to produce his records.<sup>33</sup> According to the Court of Appeals, this order should have been issued as a matter of course.<sup>34</sup> Although the Government's complaint was filed in July 1961, a hearing on the Government's motion for a temporary injunction was not held until March 1962.<sup>35</sup> After the hearing the judge failed to issue any order granting or denying the injunction. The Government treated this failure as a denial of its application and sought and obtained preliminary relief from the Circuit Court.<sup>36</sup> The trial on the merits in the District Court was not held until July 1964, more than two years later. The judge then kept the case under advisement until January 1965 when he ordered the registrar to apply the same lenient standards in grading Negroes' applications as he had used for whites. He refused, however, to bar use of the interpretation test. This decision is now on appeal.<sup>37</sup>

The Forrest County registrar has refused to respect either Federal law or Federal court orders. In August 1960, in plain violation of the 1960 Civil Rights Act, he refused to comply with a demand of the Department of Justice to produce his registration and voting records.<sup>38</sup> When the Circuit Court issued a preliminary injunction enjoining the registrar from discriminating against Negro applicants, he violated the court order and was found guilty of civil contempt. The Circuit Court then ordered him, among other things, to register a group of qualified Negro applicants and to use a limited number of sections of the Mississippi constitution in administering the interpretation test.<sup>39</sup> In April 1964 the Government filed a second contempt proceeding against the registrar, alleging that he had continued to violate the orders of the Circuit Court. This second contempt proceeding has been consolidated with the appeal from the trial court's denial of relief and both issues are now before the Fifth Circuit.

Although most cases have not yet required such protracted proceedings, expenditures of great time and effort are usually required to accomplish any result. For example, in a case in Hinds County, Department attorneys, with clerical assistance, had to analyze some 14,000 application forms and control

<sup>32</sup> For a detailed description of the early proceedings see Note, *Judicial Performance in the Fifth Circuit*, 73 Yale L. J. 90, 92-93 (1963).

<sup>33</sup> *United States v. Lynd*, 301 F. 2d 818, 820 (5th Cir. 1962), *cert. denied*, 371 U.S. 893 (1962).

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> *United States v. Lynd*, 301 F. 2d 818 (5th Cir. 1962). The circuit court in *United States v. Lynd*, 321 F. 2d 26 (5th Cir. 1963), *cert. denied*, 375 U.S. 968 (1964), held that it was error for the district court in effect to deny the application for the preliminary injunction, continued its own injunction pending a final disposition by the district court, and ordered that the district court move with dispatch in further proceedings.

<sup>37</sup> *United States v. Lynd*, *appeal docketed*, No. 22477, 5th Cir., March 18, 1962.

<sup>38</sup> See *United States v. Lynd*, 301 F. 2d 818, 819-20 (5th Cir. 1962).

<sup>39</sup> See *United States v. Mississippi*, 229 F. Supp. 925, 979, n. 18 (S.D. Miss. 1964).

cards based on these forms to prove that there was, in fact, discrimination in the selection of test questions and in their gradings. As described by the former Assistant Attorney General in charge of the Civil Rights Division:

This is just one of the steps necessary to prepare a 1971(a) case. Besides this, registration books must be counted, registered voters and rejected applicants identified by race, and most difficult of all, perhaps, assistance given to white applicants but not to Negro applicants must be proved. These problems require the Department attorneys to analyze large numbers of records and interview sometimes hundreds of witnesses to establish a case.<sup>40</sup>

As a result of five years of intense effort of this type, the Department of Justice has obtained effective final decrees in Panola, Tallahatchie, and Walthall Counties. In five counties preliminary relief has been granted pending a decision on the merits of the Government's claims.<sup>41</sup> In Benton and Marshall Counties offers of judgment have been made and negotiations are proceeding with respect to the terms and conditions of registration. The remaining cases are either in preparation, awaiting trial, submitted for decision by the trial court, or pending on appeal. No 1971(a) case in Mississippi has been finally decided adversely to the Government.<sup>42</sup>

### 1971(b) Cases

Acts of intimidation, threats or coercion by officials or private persons for the purpose of interfering with the right to vote are prohibited by Federal law which authorizes the Attorney General to seek preventive relief.<sup>43</sup> Since 1957, when § 1971(b) was enacted, the Department of Justice has brought seven cases in Mississippi under this authority, all of which have been directed at preventing official action alleged to have been in reprisal for registration or voting.

In five cases the Department sought to prevent State prosecutions of Negroes involved in civil rights activities relating to voting.<sup>44</sup> In one it sought to enjoin a sheriff from engaging in violence at the courthouse.<sup>45</sup> In another it sought reinstatement of a teacher who had been discharged after being involved in a voter discrimination case.<sup>46</sup>

The record of the Department in establishing that official action had been taken in reprisal for voting reflects the unsatisfactory nature of the present remedy. In no case was such a finding made.<sup>47</sup> In three cases the court held that the Government had failed to prove that the purpose of the action

<sup>40</sup> Statement of Burke Marshall, T. 258-59.

<sup>41</sup> These counties are Forrest, Hinds, Lauderdale, Sunflower, and Madison. T. 258.

<sup>42</sup> *Ibid.*

<sup>43</sup> 42 U.S.C. § 1971(b), (c) (1958).

<sup>44</sup> *United States v. City of Greenwood*, Civil No. GC-638 N.D. Miss., Mar. 30, 1963; *United States v. Holmes County*, 9 Race Rel. L. Rep. 229 (S.D. Miss., 1964); *United States v. Leflore, Leflore County*, Civil No. GC-6330, N.D. Miss., June 28, 1963; *United States v. Warner*, 9 Race Rel. L. Rep. 1101 (S.D. Miss. 1964); *United States v. Wood*, 295 F. 2d 772 (5th Cir. 1961).

<sup>45</sup> *United States v. Edwards*, 333 F. 2d 575 (5th Cir. 1964).

<sup>46</sup> *United States v. Board of Educ.*, 332 F. 2d 40 (5th Cir. 1964).

<sup>47</sup> *Cf. United States v. Warner*, 9 Race Rel. L. Rep. 1101 (S.D. Miss. 1964), where the district court enjoined a State perjury prosecution of Negroes based on their affidavits given in a § 1971(a) suit on the ground that the state lacked power to bring such proceedings.

was reprisal.<sup>48</sup> The three remaining cases were either settled prior to a determination on the merits or are still pending.<sup>49</sup>

The difficulties of proving reprisal may be illustrated by the proceedings in *United States v. Board of Education*.<sup>50</sup> In this case Mrs. Ernestine Talbert, a Negro school teacher and librarian, was notified that her employment contract to teach school would not be renewed the day after a district court had entered a decision in a voting discrimination case in George County, Mississippi. Mrs. Talbert and others had given affidavits which were used by the Government in support of its suit. The Government filed a complaint charging that the reason for her discharge was the filing of her affidavit and her involvement in the registration suit. It further charged that the failure to renew her contract was an attempt to intimidate her and other Negroes in the free exercise of their right to register and vote. At the trial the Government introduced evidence to show that Mrs. Talbert's record as a teacher was excellent and that she had been recommended by her principal for reemployment one month before news of the affidavit was circulated. It was also shown that the superintendent of schools decided not to renew her contract without discussing it with the principal who had recommended her for reemployment. The superintendent, on the other hand, testified that he did what he thought was in the best interests of the school; that the affidavit was a factor only insofar as he did not like any of his teachers to become involved in litigation; that Mrs. Talbert's record had not been superior but, in fact, had been inferior, and that the replacement for Mrs. Talbert was a person who had been preferred over her when she was originally hired.

The Government appealed from this decision, arguing that since the factual issue was whether the superintendent's purpose was reprisal, the Court of Appeals should review the matter fully. The Court held, however, that the lower court's finding of fact would not be disturbed unless clearly erroneous and thus affirmed the judgment below. The problems of this case are typical of those arising in §1971(b) cases. As Burke Marshall commented:

The principal problem under the intimidation statute is that, as presently interpreted, it requires the Government to prove an intimidation or a threat which is undertaken for the purpose of interfering with the right to vote. This burden is a very difficult one to sustain.<sup>51</sup>

In the absence of successful applications of § 1971(b), it is not surprising that the existence of this remedy has failed to allay fears of economic reprisal for attempted registration or voting. Of all the Negro witnesses appearing before the Commission who cited the fear of economic or physical

<sup>48</sup> *United States v. Board of Educ.*, 332 F. 2d 40 (5th Cir. 1964); *United States v. Edwards*, 333 F. 2d 575 (5th Cir. 1964); *United States v. Holmes County*, 9 Race Rel. L. Rep. 229 (S.D. Miss. 1964).

<sup>49</sup> *United States v. Wood*, 295 F. 2d 772 (5th Cir. 1961); *United States v. City of Greenwood*, Civil No. GC-638, N.D. Miss., Mar. 30, 1963; *United States v. Lellors County*, Civil No. GC-6330, N.D. Miss., June 28, 1963.

<sup>50</sup> 332 F. 2d 40 (5th Cir. 1964).

<sup>51</sup> T. 261.

reprisal, only one referred to the remedy provided by Federal law, and he cited the case involving Mrs. Talbert which the Government had lost.<sup>62</sup>

Experience over the past eight years in Mississippi has demonstrated that judicial remedies have not proved effective in eliminating discrimination in voting or the effects of intimidation and reprisal against Negroes attempting to exercise the right to register or vote.

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<sup>62</sup>T. 216. The witness, L. S. Alexander, stated: "[A] young woman who was working in a certain county in southeast Mississippi lost her [teaching] job and it went to the circuit court of appeals, and she was let out, and she is at my office now, working as an expanded service and placement bureau, on services in which we made or manufactured for her."

## CHAPTER VII. FINDINGS AND RECOMMENDATIONS

### PRELIMINARY STATEMENT

The 15th amendment to the United States Constitution commands that no citizen shall be deprived of the right to vote by reason of race or color. This requirement of the Constitution which is binding in every State has, in substance, been repudiated and denied in Mississippi. Since 1875 Negroes in Mississippi have been systematically excluded from the franchise by legislative enactment, fraud and violence.

For many years the Federal Government failed to take any action to enforce the 15th amendment in Mississippi or in other Southern States where similar practices existed. But since 1957 Congress has acted three times in an effort to eliminate discrimination in voting, and the Civil Rights Division of the Department of Justice has vigorously exercised the authority conferred by Congressional enactment.

In Mississippi these efforts have proved largely unavailing and few Negroes have been registered to vote. The barriers of unjust tests and discriminatory administration have remained all but insurmountable while a deep-seated fear of economic or physical reprisal has acted as a significant deterrent for Negroes who would otherwise wish to register.

Legislation is now pending in Congress which will go far to solve these problems by eliminating the tests and by authorizing the appointment of Federal examiners to register voters. Since 1959 the Commission has recommended such legislation as the only solution and its recent experience in Mississippi which is reflected in this report has confirmed this view.

At the same time the Commission has received evidence of the beginning of a change of attitude in Mississippi towards Federal law. At the hearing, Governor Paul Johnson appeared before the Commission and stated that Mississippi would obey the Civil Rights Act of 1964 "as the law of the land." The Mississippi Economic Council, the State chamber of commerce, issued a statement urging, among other things, "that registration and voting laws, should be administered fairly and impartially for all." Similar statements have been made more recently by other groups.

The Commission is gratified by this evidence of acceptance of the requirements of the Constitution. In this state of affairs, it is worth emphasizing that there is nothing in existing or pending Federal legislation which will in any way detract or interfere with local efforts to eliminate discrimination.

While the pending voting bill, if enacted, may result in the appointment of Federal examiners in Mississippi, it would not prevent State officials from registering voters. The State in fact could do much to undo past acts of discrimination by taking affirmative action to encourage citizens to register and vote. State officials might consider, for example, the adoption of procedures, already utilized in a number of other states, to facilitate registration by providing local or precinct registration units or even door-to-door canvassing. They might further consider positive steps to assure Negro teachers that registration and voting will not result in the loss of their jobs.

Under the leadership of President Johnson, the Federal Government is now making a new and full commitment to assure all citizens the right to vote. If this commitment is enacted into law and the law is implemented vigorously, Negro Mississippians may finally enjoy the right to participate in the processes of self government. If the State of Mississippi joins in this commitment and assumes its share of the responsibility, places now suffering the consequences of racial strife can become communities of understanding and progress in which all citizens have a stake.

## FINDINGS

1. The State of Mississippi, for the purpose of preventing registration by Negroes, has enacted over the past 75 years a series of laws establishing a constitutional interpretation test, and other tests for registration, and has vested broad discretion in county registrars to administer these requirements. The stringency of these tests was increased at a time when most whites were already registered and few Negroes were registered.

2. Registration records indicate that county registrars in a large number of Mississippi counties have discriminated against Negroes in the administration of these tests primarily by (a) giving Negroes more difficult constitutional sections to interpret than whites; (b) disqualifying Negroes for insufficiencies in the completion of the application form or in the interpretation of the selected constitutional section when comparable or greater insufficiencies failed to disqualify white applicants; and, (c) affording assistance to white applicants but not to Negroes.

3. The Mississippi poll tax was established and made a qualification for voting for the purpose of preventing the exercise of the franchise by Negroes. In some counties local officials have refused to accept payment of the poll tax from Negroes, or have encouraged white electors to pay such tax and have failed to encourage, or have discouraged, Negroes from doing so. The poll tax was adopted on the belief that Negroes as a class would find it more difficult to pay than whites as a class. In 1890, when the poll tax was adopted, this belief was justified and it remains so today. In light of actual economic conditions, the payment of a poll tax is a significantly heavier burden for most Negroes than it is for most whites.

4. Negro applicants for registration, Negroes seeking to vote, and civil rights workers have been harassed and intimidated by local officials in connection with registration and voting activities. On occasion such persons have suffered violence from private persons.

5. Negro applicants for registration, Negroes seeking to vote, and civil rights workers have, on occasion, suffered acts of economic intimidation and reprisal in connection with registration and voting, both from public officials and from private persons.

6. There is widespread fear in many Negro communities that an attempt to register or vote would result in economic or physical reprisals. Such fears have been increased by the provisions of Mississippi law which require newspaper publication of the name and address of any applicant, and by the practice of requiring the applicant to return to the office of the registrar to determine whether he has passed the test. Fear of reprisal is a major factor inhibiting attempts by Negroes to register or vote. In counties where fear is great, Negroes will not attempt to register in significant numbers without assistance or encouragement.

7. Most Negro Mississippians now of voting age have been educated in segregated public schools which were and still are inadequate and greatly inferior to public schools provided for white children. Public education of Negroes has been so poor and so inferior to the education afforded whites that any test of skills taught in the public schools is inherently unfair as a prerequisite to voting.

8. Existing Federal remedies have not proved adequate to eliminate discrimination and to prevent reprisals for voting. Law suits against registrars have proved too slow and too cumbersome a device to remedy discrimination. Recent judicial approaches promise more speedy relief but are still inadequate in that the registration machinery will remain in the hands of State officials who have demonstrated an unwillingness to enforce Federal law. Law suits aimed at acts of reprisal have been filed in only a few cases and do not appear to have provided an effective remedy.

9. As a result of the foregoing, it is estimated that in Mississippi less than 7 percent of the Negro voting age population but more than 70 percent of the white voting age population are registered to vote. Mississippi has by far the lowest rate of Negro registration of any State in the South and has shown virtually no increase in such registration as the result of the enactment of Federal legislation designed to eliminate discrimination in voting.

## RECOMMENDATIONS

### *Recommendation No. 1*

In past reports to the President and Congress, the Commission has recommended a variety of corrective measures to eliminate discriminatory denials of the right to vote. Prime among these recommendations have



been proposals calling for the elimination, as a prerequisite for voting, of any test or requirement of literacy, and the establishment of a system of Federal registrars to provide an effective administrative procedure for securing the right to vote in areas where racial discrimination exists.

The Commission wholeheartedly supports the legislation now pending in Congress which would accomplish these objectives. For the legislation to be fully effective in securing the right of citizens to vote, we make the following recommendations:

(a) All literacy tests, including any requirement that the applicant complete any form, should be abolished in view of the fact that such tests and requirements have been established and used for discriminatory purposes.

(b) In areas where Federal examiners have been appointed, applicants should be free to seek registration with such examiners without prior recourse to the State registration process.

(c) The requirement of any poll tax payment as a prerequisite to voting in any election should be abolished, in view of the fact that poll taxes have been intended and utilized as a means of discrimination. In the opinion of the Commission, there can be no reasonable doubt of the power of Congress to enact such a provision as an exercise of the power expressly granted to Congress to enforce the 15th amendment.

(d) Provision should be made for the assignment of Federal poll watchers at election places (in districts where Federal examiners have been appointed) to determine whether persons entitled to vote are being permitted to vote and have their vote counted.

#### *Recommendation No. 2*

The Commission recommends to the President that the resources of the Executive branch be explored for the purpose of establishing an affirmative program to encourage persons to register and vote. Such a program should:

(a) Assure better dissemination of information concerning the right to vote and the requirements of registration. (In this connection consideration should be given to the use of branch facilities and personnel of such agencies as the Post Office and the Department of Agriculture.)

(b) Provide training and education to foster better understanding of the rights and duties of citizenship and the significance of voting, and to encourage persons to register and vote. (In this connection consideration should be given to the use of programs of adult education, literacy and community action which are administered by the Department of Health, Education and Welfare, the Department of Agriculture, or the Office of Economic Opportunity.)

*Concurring Statement of Vice Chairman Patterson and Commissioner Rankin on Recommendation No. 1*

We cannot defend the poll tax in view of its use as a means of discrimination, and we concur in the recommendation that it be abolished. However, we take no position on the validity of the proposition stated in the second sentence of paragraph (c).

*Concurring Statement of Commissioner Hesburgh on Recommendation No. 1*

I am aware that some are concerned that in acting upon our strong conviction that literacy tests must be removed as a discriminatory impediment to voting, we may somehow impair the foundations of good government based upon an informed electorate. While I can appreciate this concern, I do not think that this legislation will produce such a result.

In an era when citizens can and do inform themselves by means of television and radio, literacy no longer seems an important qualification for voting. There are some 30 States which do not impose any literacy test for voting. No one has claimed that the quality of government in these States has suffered in comparison with States which have such tests.

During the Mississippi hearing, we heard scores of witnesses who had little formal education and who did not meet all of the traditional standards of literacy. Nonetheless, these were people who by their interest and awareness were eminently qualified to participate in responsible democratic government. Their concerns for good citizenship and good government have been sharpened by years of deprivation and denial. When they are permitted to register and vote, democracy will be stronger for their contribution.

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## APPENDIXES

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# APPENDIX A

## MISSISSIPPI VOTER REGISTRATION APPLICATION FORM

### SWORN WRITTEN APPLICATION FOR REGISTRATION

(By reason of the provisions of Sections 241, 241-A and 244 of the Constitution of Mississippi and relevant statutes of the State of Mississippi, the applicant for registration, if not physically disabled is required to fill in this form in his own handwriting in the presence of the registrar and without assistance or suggestion of any person or memorandum.)

1. Write the date of this application .....
2. What is your full name? .....
3. State your age and date of birth .....
4. What is your occupation? .....
5. Where is your business carried on? (Give city, town or village, and street address, if any, but if none, post office address.) If not engaged in business, so state. ....
6. By whom are you employed? (Give name and street address, if any, but if none, post office address.) If not employed, so state. ....
7. Where is your place of residence in the county and district where you propose to register? (Give city, town or village, and street address, if any, but if none, post office address.) .....
8. Are you a citizen of the United States and an inhabitant of Mississippi? .....
9. How long have you resided in Mississippi? .....
10. How long have you resided in the election district or precinct in which you propose to register? .....
11. State your last previous places of residence. (Give street address, if any, but if none, post office address.) .....
12. Are you a minister of the gospel in charge of an organized church, or the wife of such a minister? If so, what church? (Give address in each instance.) .....
13. Check which oath you desire to take: (1) General ..... (2) Minister's: .....
- (3) Minister's wife: ..... (4) If under 21 years at present, but will be 21 years old by date of general election. ....
14. If there is more than one person of your same name in the precinct, by what name do you wish to be called? .....
15. Have you ever been convicted of any of the following crimes: bribery, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement, or bigamy? .....
16. Have you ever been convicted of any other crime (excepting misdemeanors for traffic violations)? .....
17. If your answer to question 15 or 16 is "Yes", name the crime or crimes of which you have been convicted, and the year, court, and place of such conviction or convictions: .....
- .....
- .....
18. Write and copy in the space below, Section ..... of the Constitution of Mississippi: (Instructions to Registrar: You will designate the Section of the Constitution and point out same to applicant). .....
- .....

19. Write in the space below a reasonable interpretation (the meaning) of the Section of the Constitution of Mississippi which you have just copied:

.....  
.....

20. Write in the space below a statement setting forth your understanding of the duties and obligations of citizenship under a constitutional form of government.

.....  
.....

21. Sign the oath or affirmation referred to in question 13, and which is:

NOTE: Registrar give applicant oath selected under question 13, Mark out that portion of oath that is not applicable.

NOTE: Registrar. In registering voters in Cities and Towns not all in one election district, the name of such city or town may be substituted in the Oath for the Election District.

(a) GENERAL and/or SPECIAL OATH:

I, ....., do solemnly swear (or affirm) that I am twenty-one years old (or I will be before the next election in this County) and that I will have resided in this State two years, and ..... Election District of ..... County one year next preceding the ensuing election, and am now in good faith a resident of the same, and that I am not disqualified from voting by reason of having been convicted of any crime named in the Constitution of this State as a disqualification to be an elector; that I will truly answer all questions propounded to me concerning my antecedents so far as they relate to my right to vote, and also as to my residence before my citizenship in this District; that I will faithfully support the Constitution of the United States and of the State of Mississippi, and will bear true faith and allegiance to the same, So Help Me God.

.....  
Applicant's Signature to Oath

(b) OATH OF MINISTER and/or MINISTER'S WIFE:

I, ....., do solemnly swear (or affirm) that I am twenty-one years old (or I will be before the next election in this County) and that I am a Minister, or the wife of a Minister, of the Gospel in charge of an organized church, and that I will have resided two years in this State and in ..... Election District of ..... County six months next preceding the ensuing election, and am now in good faith a resident of the same, and that I am not disqualified from voting by reason of having been convicted of any crime named in the Constitution of this State as a disqualification to be an elector; that I will truly answer all questions propounded to me concerning my antecedents so far as they relate to my right to vote, and also as to my residence before my citizenship in this District; that I will faithfully support the Constitution of the United States and of the State of Mississippi, and will bear true faith and allegiance to the same. So Help Me God.

.....  
Applicant's Signature to Oath

.....  
Applicant's Signature to Application  
(The Applicant will also sign his name here)

STATE OF MISSISSIPPI

County of .....

Sworn to and subscribed before me by the within named ..... on  
this the ..... day of ....., 19.....

.....  
County Registrar

(SEAL)

Is applicant of good moral character? .....

If not, why? .....

Does applicant qualify? .....

Passed ..... Failed .....

.....  
County Registrar

## APPENDIX B

### DEPARTMENT OF JUSTICE

*Registration statistics, by county, for June 1, 1962 (34 of 82 counties)*

County	Whites over 21	Whites registered	Percent	Negroes over 21	Negroes registered	Percent
1. Amite.....	4,449	3,532	80.0	3,560	1	0.028
2. Benton*.....	2,514	1,867	74.2	1,419	30	.21
3. Claiborne.....	1,688	1,440	85.3	3,969	15	.37
4. Clarke.....	6,072	5,000	83.0	2,998	1	.03
5. Coahoma.....	8,708	6,380	73.0	14,004	1,061	7.6
6. Copiah.....	8,153	7,533	92.0	6,407	25	.39
7. Covington*.....	5,329	4,773	89.5	7,032	202	3.5
8. DeSoto*.....	5,338	3,877	72.6	6,246	11	.18
9. Forrest*.....	22,431	10,903	48.6	7,495	22	.3
10. Franklin.....	3,403	3,731	100.0	1,842	236	12.8
11. George*.....	5,276	3,752	71.1	580	10	1.7
12. Greene*.....	3,518	3,543	100.0	859	43	5
13. Grenada*.....	5,792	3,884	67.0	4,323	135	3.1
14. Hinds.....	67,836	56,363	80.0	36,138	4,756	13.2
15. Holmes*.....	4,773	3,731	77.9	8,757	8	.09
16. Jefferson Davis*.....	3,629	3,229	88.9	3,222	76	2.3
17. Kemper*.....	3,113	2,769	88.9	3,221	30	.9
18. Lamar*.....	6,489	5,042	91.0	1,071	0	0
19. Leake*.....	6,754	3,796	56.2	3,397	116	3.4
20. Leflore.....	10,274	7,168	70.0	13,657	268	2
21. Lowndes.....	16,460	8,312	50.5	8,362	95	1.1
22. Madison.....	5,622	5,458	97.0	10,366	121	1.1
23. Marion.....	8,997	9,540	100.0	3,630	363	10
24. Marshall.....	4,342	4,162	96.0	7,168	57	.8
25. Newton.....	8,014	5,700	71.0	3,018	104	2.8
26. Panola.....	7,639	5,309	69.0	7,250	2	.028
27. Quitman.....	4,176	2,991	71.6	5,673	436	6.6
28. Rankin.....	13,246	12,000	90.0	6,944	94	1.35
29. Tallahatchie*.....	5,099	4,208	82.5	6,483	5	.07
30. Tunica.....	2,011	1,436	71.0	5,822	42	.72
31. Walthall.....	4,736	4,219	89.0	2,490	2	.08
32. Washington.....	19,837	10,838	54.5	20,619	1,762	8.6
33. Wilkinson.....	2,340	2,438	100.0	4,120	60	1.5
34. Yazoo.....	7,598	7,130	93.0	8,719	256	2.9

\*White registration figures for these 13 asterisked counties were arrived at by taking the total vote cast in the 1963 primary in that county and subtracting the number of registered Negroes. The number of registered Negroes was arrived at by count from the registration or poll books. All the registration figures for the remaining 21 counties were arrived at by count either from the registration books or the poll books.

## APPENDIX C

### DEPARTMENT OF JUSTICE

*Registration statistics, by county, for January 1, 1964<sup>1</sup> (29 of 82 counties)*

County	White persons over 21	White persons registered	Percent	Negro persons over 21	Negro persons registered	Percent
1. Benton.....	2,514	2,226	92.0	1,419	55	3.0
2. Chickasaw.....	6,388	4,548	72.0	3,054	1	.003
3. Claiborne.....	1,688	1,528	90.5	3,969	26	.65
4. Clarke.....	6,072	4,829	80.0	3,998	64	2.2
5. Copiah.....	8,153	7,533	92.3	6,407	25	.39
6. Forrest.....	22,431	13,253	59.0	7,494	236	3.1
7. George.....	5,276	4,200	79.0	580	14	2.4
8. Hinds.....	67,836	62,410	92.1	36,138	5,616	15.5
9. Holmes.....	4,773	4,800	100.0	8,757	20	.23
10. Humphreys.....	3,344	2,538	68.3	5,561	0	0
11. Issaquena.....	640	640	100.0+	1,081	5	.46
12. Jasper.....	5,327	*4,500	82.2	3,675	10	.23
13. Jefferson Davis.....	3,629	3,236	89.0	3,222	126	3.9
14. Lamar.....	6,489	5,752	88.6	1,071	0	0
15. Lauderdale.....	27,806	*18,000	64.7	11,924	*1,700	14.3
16. Leake.....	6,754	*6,000	88.8	3,397	220	6.4
17. Leflore.....	10,274	7,348	71.5	13,567	281	1.6
18. Lowndes.....	16,460	8,687	52.7	8,362	99	1.1
19. Madison.....	5,622	6,256	100.0+	10,366	218	2.
20. Marion.....	8,997	10,123	100.0+	3,630	383	11.
21. Marshall.....	4,342	4,229	97.3	7,168	177	2.5
22. Oktibbeha.....	8,423	4,413	52.3	4,952	128	2.5
23. Panola.....	7,639	5,922	77.0	7,250	878	12.
24. Scott.....	7,742	*5,400	69.7	3,752	16	.42
25. Sunflower.....	8,785	7,082	80.1	13,524	185	1.4
26. Tallahatchie.....	5,099	4,464	87.5	6,483	17	.26
27. Tunica.....	2,011	1,407	69.9	1,407	38	.6
28. Walthall.....	4,536	4,536	100.0+	2,499	4	.124
29. Warren.....	13,530	11,654	86.1	10,726	2,433	22.6

<sup>1</sup> The date is approximated, median date for tabulations covering both 1963 and 1964. All registration figures for these 29 counties were arrived at by count of the registration or poll books. The figures for white registration are subject to some inflation due to the fact that not all registrars have systematically purged for deaths and transfers. The figures for Negro registration are as accurate as possible from counts and cross checks of the registration and poll books.

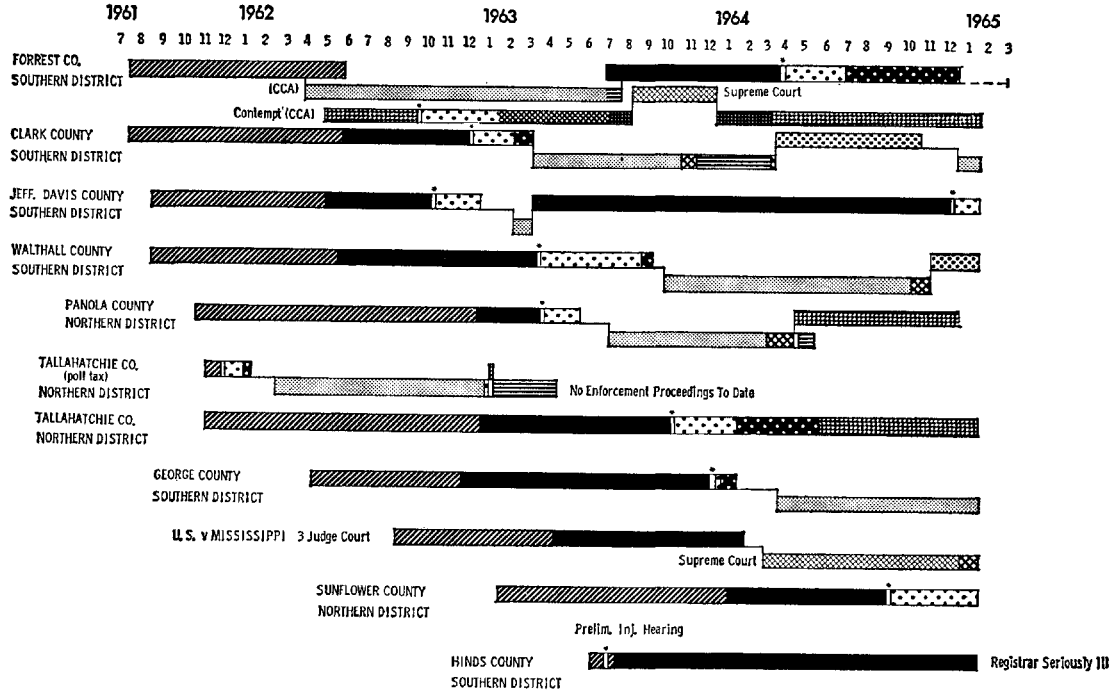
\*Estimate.



# APPENDIX D

## DEPARTMENT OF JUSTICE

### 1971 (a) LAWSUITS IN MISSISSIPPI



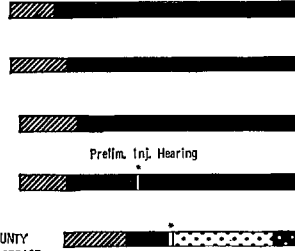
OKTIBBEHA COUNTY NORTHERN DISTRICT

CHICKASAW COUNTY (poll tax) NORTHERN DISTRICT

COPIAH COUNTY SOUTHERN DISTRICT

LAUDERDALE COUNTY SOUTHERN DISTRICT

MADISON COUNTY SOUTHERN DISTRICT



HOLMES CO. SOUTHERN DISTRICT

MARSHALL CO. NORTHERN DISTRICT

JASPER COUNTY SOUTHERN DISTRICT

CHICKASAW CO. NORTHERN DISTRICT

BENTON COUNTY NORTHERN DISTRICT

MARION COUNTY SOUTHERN DISTRICT

ISSAQUEUNA COUNTY SOUTHERN DISTRICT

Offer of Judgment by D Based On New Registration Ordered. Issue Now: Terms of Re-registration.

Offer of Judgment by D; New Registration Ordered by County - Pending

KEY

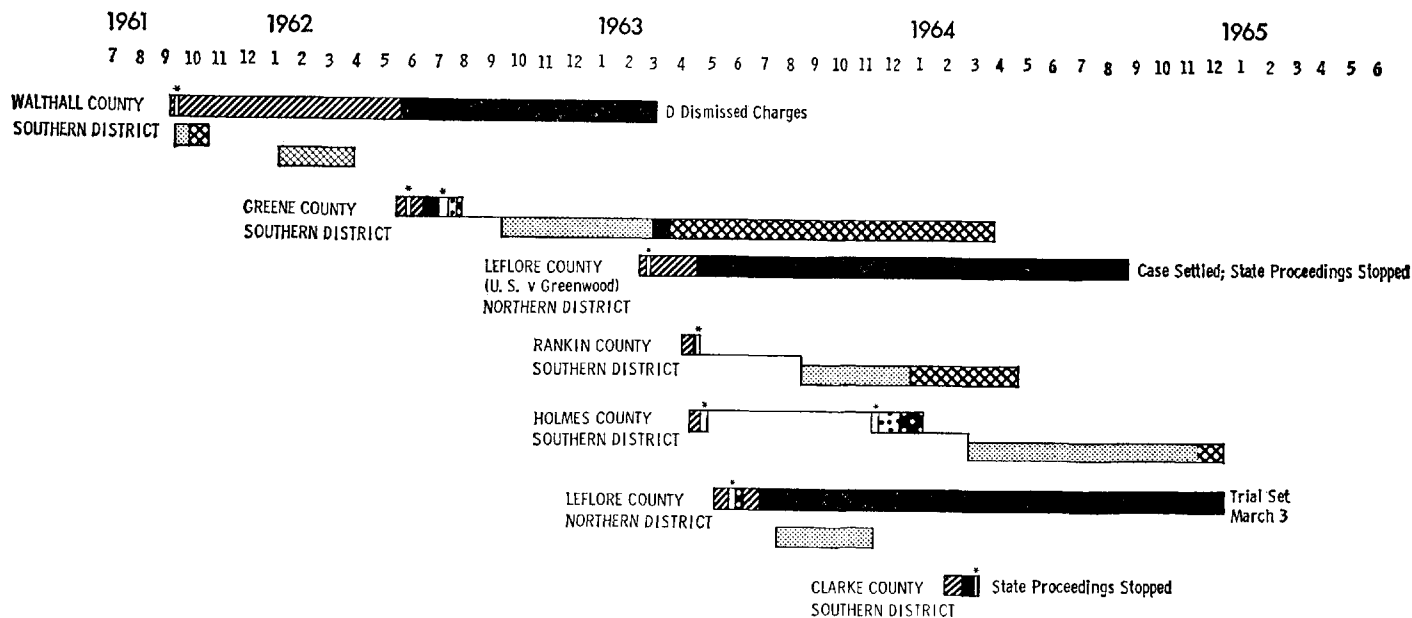
- RULE 12 MOTION PRACTICE
- DISCOVERY
- TRIAL
- TRIAL TO SUBMISSION
- SUBMISSION TO JUDGMENT
- JUDGMENT TO NOTICE OF APPEAL PENDING
- NOTICE OF APPEAL TO ORAL ARGUMENT
- ORAL ARGUMENT TO OPINION
- POST OPINION PROCEEDINGS (CCA)
- POST MANDATE PROCEEDINGS (CC)
- POST TRIAL ENFORCEMENT
- CONTEMPT HEARING TO JUDGMENT
- POST CONTEMPT JUDGMENT ENFORCED
- SUPREME COURT PROCEEDINGS

# APPENDIX E

## DEPARTMENT OF JUSTICE

### 1971 (b) LAWSUITS

### IN MISSISSIPPI



U.S. GOVERNMENT PRINTING OFFICE: 1968

Key: See preceding page.

1000 - 1000

DOCUMENTS COLLECTION